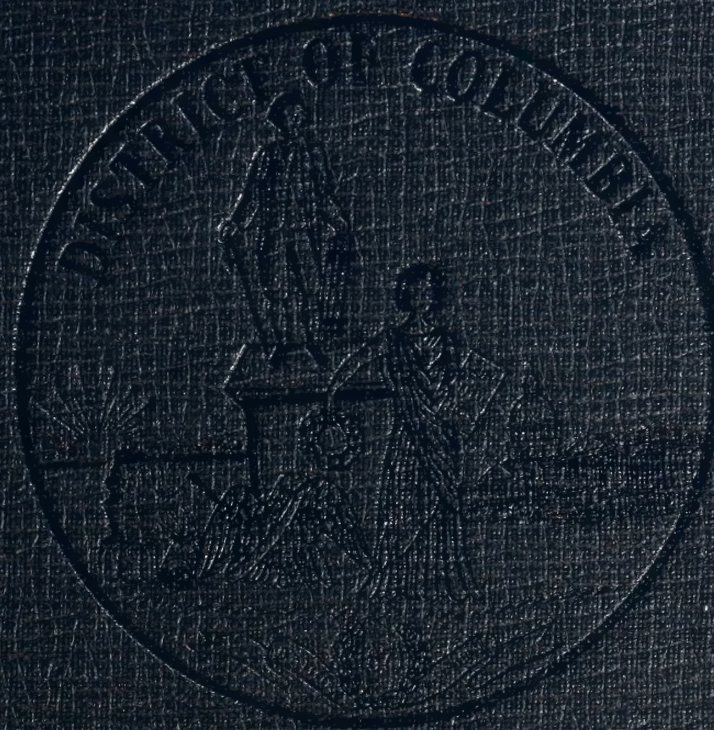


District of Columbia Code

1981 Edition



Property of the District of Columbia Government



Digitized by the Internet Archive
in 2014

DISTRICT OF COLUMBIA CODE

ANNOTATED

1981 EDITION

With Provision for Subsequent Pocket Parts

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE,
RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA (EXCEPT
SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF
COLUMBIA BY REASON OF BEING GENERAL AND
PERMANENT LAWS OF THE UNITED STATES), AS OF
MARCH 25, 1998, AND NOTES
TO COURT DECISIONS THROUGH
MARCH 1, 1998

VOLUME 8

1998 REPLACEMENT

TITLE 37—LIBRARIES

TITLE 38— LIENS

TITLE 39—MILITARY

TITLE 40—MOTOR VEHICLES AND TRAFFIC

TITLE 41—PARTNERSHIPS

TITLE 42—PERSONAL PROPERTY

TITLE 43—PUBLIC UTILITIES

TITLE 44—RAILROADS AND OTHER CARRIERS

Prepared and Published Under Authority of the Council of the District
of Columbia as supervised by the Office of the General Counsel,

Charlotte M. Brookins-Hudson, General Counsel.

Brian K. Flowers, Legislative Counsel.

Benjamin F. Bryant, Jr., Codification Counsel.

Karen R. Westbrook, Codification Assistant.

Edited and Annotated by the Editorial Staff of the Publishers
Under the Supervision of Richard W. Walter, Jr., George J. Harley,
Valerie H. Southard, Kathleen E. Garrison, James T. Anderson and J. Lynn Cason.

MICHIE

CHARLOTTESVILLE, VIRGINIA

1998

DISTRICT OF COLUMBIA
CODE
1981 EDITION

Copyright © 1981 — 1998

By

THE DISTRICT OF COLUMBIA

All rights reserved.



4167711

"Michie" and the Open Book and Gavel logo are trademarks of
Lexis Law Publishing, a division of Reed Elsevier, Inc.

COUNCIL OF THE DISTRICT OF COLUMBIA

Linda W. Cropp, *Chairman*

Sandra Allen
Sharon Ambrose
Harold Brazil
David A. Catania
Kevin P. Chavous
Jack Evans

Charlene Drew Jarvis
Hilda Howland Mason
Kathleen Patterson
Carol Schwartz
Frank Smith, Jr.
Harry Thomas, Sr.

OFFICE OF THE GENERAL COUNSEL

Under Whose Direction This
Volume Has Been Prepared

Charlotte M. Brookins-Hudson, *General Counsel*
Brian K. Flowers, *Legislative Counsel*
Benjamin F. Bryant, Jr., *Codification Counsel*
Karen R. Westbrook, *Codification Assistant*

USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Code intended to increase the usefulness of the Code to the user.

2. District Boards and Commissions.
3. Public Care Systems.
4. Police and Fire Departments.
5. Building Regulations and Regulations.
6. Health and Safety.
7. Highways, Ferries, Bridges.
8. Parks and Playgrounds.
9. Public Buildings and Grounds.
10. Weights, Measures, and Markets.

PART II.—JUDICIARY AND JUDICIAL PROCEDURE

- *11. Organization and Jurisdiction of the Courts.
- *12. Right to Petition.
- *13. Procedure Generally.
- *14. Power.
- *15. Judgments and Enforcement: Force and Compel.
- *16. Contempt: Actions, Proceedings and Matters.
- *17. Records.

PART III.—DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

- *18. Wills.
- *19. Descent and Distribution.
- *20. Probate and Administration of Decedents' Estates.
- *21. Fiduciary Relations and the Accounts of.

PART IV.—CRIMINAL LAW AND PROCEDURE

22. Criminal Offenses.
- *23. Criminal Procedure.
24. Prisoners and Their Treatment.

PART V.—GENERAL STATUTES

25. Alcoholic Beverages.

*This has been omitted in law.

TITLES OF DISTRICT OF COLUMBIA CODE

PART I.—GOVERNMENT OF DISTRICT

Title

1. Administration.
2. District Boards and Commissions.
3. Public Care Systems.
4. Police and Fire Departments.
5. Building Restrictions and Regulations.
6. Health and Safety.
7. Highways, Streets, Bridges.
8. Parks and Playgrounds.
9. Public Buildings and Grounds.
10. Weights, Measures, and Markets.

PART II.—JUDICIARY AND JUDICIAL PROCEDURE

- *11. Organization and Jurisdiction of the Courts.
- *12. Right to Remedy.
- *13. Procedure Generally.
- *14. Proof.
- *15. Judgments and Executions; Fees and Costs.
- *16. Particular Actions, Proceedings and Matters.
- *17. Review.

PART III.—DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

- *18. Wills.
- *19. Descent and Distribution.
- *20. Probate and Administration of Decedents' Estates.
- *21. Fiduciary Relations and the Mentally Ill.

PART IV.—CRIMINAL LAW AND PROCEDURE

22. Criminal Offenses.
- *23. Criminal Procedure.
24. Prisoners and Their Treatment.

PART V.—GENERAL STATUTES

25. Alcoholic Beverages.

*Title has been enacted as law.

Title

26. Banks and Other Financial Institutions.
27. Cemeteries and Crematories.
- *28. Commercial Instruments and Transactions.
29. Corporations.
30. Domestic Relations.
31. Education and Cultural Institutions.
32. Eleemosynary, Curative, Correctional, and Penal Institutions.
33. Food and Drugs.
34. Hotels and Lodging Houses.
35. Insurance.
36. Labor.
37. Libraries.
38. Liens.
39. Military.
40. Motor Vehicles and Traffic.
41. Partnerships.
42. Personal Property.
43. Public Utilities.
44. Railroads and Other Carriers.
45. Real Property.
46. Social Security.
- †47. Taxation and Fiscal Affairs.
48. Trademarks and Trade Names.
49. Compilation and Construction of Code.

*Title has been enacted as law.

† Title has been enacted as law, except Charter Provisions (Title IV of the District of Columbia Self-Government and Governmental Reorganization Act).

Table of Contents

Title 37

Libraries

CHAPTER	PAGE
1. Public Libraries	1

Title 38

Liens

1. Mechanics, Materialmen, and Contractors	9
2. Garage Keepers and Liverymen	21
3. Hospitals	24

Title 39

Military

1. Composition, Organization, and Control	27
2. Armament, Equipment, and Supplies	31
3. Commissioned Officers	37
4. Noncommissioned Officers	42
5. Enlisted Personnel	43
6. Active Military Duty	44
7. Pay and Allowances	47
8. Courts-Martial	50
9. Miscellaneous Provisions	53

Title 40

Motor Vehicles and Traffic

1. Registration of Motor Vehicles	55
2. Inspection	74
3. Operators' Permits	79
4. Motor Vehicle Safety Responsibility	96
5. Motor Vehicle Operators; Implied Consent to Blood-Alcohol Content Tests	131
6. Traffic Adjudication	139
7. Regulation of Traffic	164
8. Regulation of Parking	204
8A. Abandoned and Junk Vehicle Removal	219
8B. Public Parking Authority	223
9. Public-Owned Vehicles	236
10. Liens on Motor Vehicles or Trailers	237
11. Installment Sales of Motor Vehicles	246

12. Child Restraint 256

13. Automobile Consumer Protection 260

14. Regulation of Bicycles 269

15. Driver License Compact 274

16. Mandatory Use of Seat Belts 279

17. Regulation of Taxicabs 282

18. Uniform Classification and Commercial Driver’s License 310

19. Food Delivery Insurance Requirements 315

20. Alternative Fuels Technology 317

Title 41

Partnerships

1. Uniform Partnerships 329

1A. Uniform Partnership Act of 1996 331

2. Uniform Limited Partnerships 369

3. Dissolution and Payment of Debts 371

4. Uniform Limited Partnership Act of 1987 373

Title 42

Personal Property

1. Recordation of Instruments 405

2. Disposition of Unclaimed Property 408

Title 43

Public Utilities

1. General Provisions 441

2. Definition of Terms and Application of Law 445

3. Penal Provisions 452

4. Creation of Public Service Commission; Members;
Counsel; Employees 458

5. Service, Valuation, Accounts 468

6. Rates, Examinations, Investigations, and Hearings 491

7. Issuance of Securities 513

8. Sale and Merger of Utilities 516

9. Orders and Court Proceedings 518

10. Gas and Electric Corporations 533

11. Gas Companies; Special Acts 537

12. Electric Light and Power Companies; Special Acts 541

13. Private Conduits 546

14. Telegraph and Telephone Companies 549

14A. Telecommunications Competition 560

15. Water Supply, Assessments, and Rates 572

16. Sanitary Sewage Works 603

16A. Water and Sewer Services Amnesty Program, Receivership Provi-
sion, and Administrative Review 617

16B. Water and Sewer Authority	622
17. Underground Facilities Protection	649
18. Cable Television	655
19. Public Utility Environmental Impact Statement Requirements	702
20. Cogeneration Facilities Appropriateness Standards	705

Title 44

Railroads and Other Carriers

1. Railroads	709
2. Street Railways and Bus Lines	712
3. Passenger Motor Vehicles for Hire	728
4. Employers' Liability	729

TITLE 37. LIBRARIES.

Chapter

1. Public Libraries..... §§ 37-101 to 37-110.

CHAPTER 1. PUBLIC LIBRARIES.

Sec.

- 37-101. Public library established; Mayor authorized to accept gifts.
37-102. Branch libraries.
37-103. Persons entitled to use of library; deposit of fees.
37-104. Board of Trustees — Appointment; qualifications; term; vacancies; officers; compensation; ex officio member.
37-105. Same — Duties; deposit of fines.
37-106. Mayor authorized to seek appropriations for library expenses.

Sec.

- 37-106.1. Purchase, rent, and sale of library-related items; use of profits.
37-106.2. Confidentiality of circulation records.
37-107. [Repealed].
37-108. [Repealed].
37-109. Transfer of miscellaneous books to District public library.
37-110. Depository of Government publications.

§ 37-101. Public library established; Mayor authorized to accept gifts.

A free public library is hereby established and shall be maintained in the District of Columbia, which shall be the property of the said District and a supplement of the public educational system of said District. Said library shall consist of a central library and such number of branch libraries so located and so supported as to furnish books and other printed matter and information service convenient to the homes and offices of all residents of the said District. All actions relating to such library, or for the recovery of any penalties lawfully established in relation thereto, shall be brought in the name of the District of Columbia, and the Mayor of the said District is authorized on behalf of said District to accept and take title to all gifts, bequests, and devises for the purpose of aiding in the maintenance or endowment of said library; and the Mayor of said District is further authorized to receive, as component parts of said library, collections of books and other publications that may be transferred to him. (June 3, 1896, 29 Stat. 244, ch. 315, § 1; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 1; 1973 Ed., § 37-101.)

Section references. — This section is referred to in § 37-102.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in Hazel v. Barry, App. D.C., 580 A.2d 110 (1990).

§ 37-102. Branch libraries.

In order to make the said library an effective supplement of the public educational system of the said District and to furnish the system of branch libraries provided for in § 37-101, the Board of Library Trustees, hereinafter provided, is authorized to enter into agreements with the Board of Education of the said District for the establishment and maintenance of branch libraries in suitable rooms in such public-school buildings of the said District as will supplement the central library and branch libraries in separate buildings. The Board of Library Trustees, hereinafter provided, is authorized within the limits of appropriations first made therefor, to rent suitable buildings or parts of buildings for use as branch libraries and distributing stations. (June 3, 1896, 29 Stat. 244, ch. 315, § 2; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 2; 1973 Ed., § 37-102.)

§ 37-103. Persons entitled to use of library; deposit of fees.

All persons who are permanent or temporary residents of the District of Columbia shall be entitled to the privileges of the District of Columbia Public Library including the use of books and other materials, as a lending or circulating library, subject to rules and regulations established by the Board of Library Trustees. For purposes of this section, persons living outside of the District of Columbia but having regular business or employment or attending school in the District of Columbia shall also be deemed temporary residents of the District of Columbia. Persons residing in jurisdictions outside of the District of Columbia but within the Washington Metropolitan Area (the Washington Metropolitan Area means the Standard Metropolitan Statistical Area "SMSA") who do not qualify as temporary residents in the manner described above may obtain a free library user's card from the District of Columbia Public Library; provided, that the jurisdiction in which such person resides permits District of Columbia residents to obtain a free library user's card from the public library in that jurisdiction. Any person residing in the Washington Metropolitan Area who does not qualify under any of the conditions stated above for the free library user's card may obtain a library user's card from the District of Columbia Public Library upon payment of a fee to be fixed by the Board of Library Trustees. (June 3, 1896, 29 Stat. 244, ch. 315, § 3; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 3; 1973 Ed., § 37-103; Mar. 3, 1979, D.C. Law 2-131, § 2, 25 DCR 3487.)

Legislative history of Law 2-131. — Law 2-131 was introduced in Council and assigned Bill No. 2-215, which was referred to the Committee on Education, Recreation and Youth Affairs. The Bill was adopted on first and

second readings on July 25, 1978 and September 19, 1978, respectively. Signed by the Mayor on October 13, 1978, it was assigned Act No. 2-278 and transmitted to both Houses of Congress for its review.

§ 37-104. Board of Trustees — Appointment; qualifications; term; vacancies; officers; compensation; ex officio member.

(a) The public library shall be in the charge of a Board of Library Trustees ("Board"), which shall be composed of 9 members appointed by the Mayor of the District of Columbia, with the advice and consent of the Council of the District of Columbia.

(b) Each member of the Board shall be a resident of the District of Columbia, and shall have a demonstrated interest in the public library.

(c) Each member of the Board shall serve for a term of 5 years, and until a successor is appointed and confirmed.

(d) Of the members of the Board appointed under this act, 3 shall be appointed for a term of 5 years, 3 shall be appointed for a term of 4 years, and 3 shall be appointed for a term of 3 years from the date the first members are installed. Thereafter, that date shall become the anniversary date for all appointments. The members of the Board serving at the time this act becomes effective shall continue to serve until the new Board members are qualified to serve.

(e) A member of the Board may be reappointed but shall not serve more than 2 consecutive terms. A person may be reappointed after an absence of 1 year from the board.

(f) Whenever a vacancy as a consequence of resignation, disability, death, or for other reasons occurs in an unexpired term on the Board, the Mayor shall appoint a replacement to fill that unexpired term in the same manner specified in subsections (a) and (b) of this section. A member appointed to fill an unexpired term shall serve only for the remainder of that term. The completion of the unexpired term of a former member's term shall not constitute a full term for purposes of subsection (e) of this section.

(g) Each year, the Board shall elect 1 of its members to serve as its president and may elect any other officer it requires.

(h) Members of the Board shall be compensated at a rate to be determined by the Mayor, in accordance with § 1-612.8.

(i) The librarian of the public library shall be a nonvoting, ex officio member of the Board. (June 3, 1896, 29 Stat. 244, ch. 315, § 4; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 4; 1973 Ed., § 37-104; Sept. 5, 1985, D.C. Law 6-17, § 2, 32 DCR 3582.)

Section references. — This section is referred to in § 1-1462.

Legislative history of Law 6-17. — Law 6-17 was introduced in Council and assigned Bill No. 6-114, which was referred to the Committee on Libraries, Recreation, and Charitable Games. The Bill was adopted on first and second readings on May 14, 1985 and May 28,

1985, respectively. Signed by the Mayor on June 10, 1985, it was assigned Act No. 6-32 and transmitted to both Houses of Congress for its review.

References in text. — "This act", referred to 2 times in subsection (d), is D.C. Law 6-17, effective September 5, 1985.

§ 37-105. Same — Duties; deposit of fines.

(a) The Board of Library Trustees shall:

(1) Have the authority to provide for the care and preservation of the

library; provided, however, that contracting for the maintenance of the library and the erection or enlargement of library buildings shall be carried out by the Office of Contracting and Procurement on behalf of the Board;

(2) Determine the policy of the public library;

(3) Have the authority to provide for the purchase of books, periodicals, newspapers, audio visual aids, and other materials necessary to operate the library;

(4) Have the authority to establish rules necessary for the organization and governance of the Board it deems necessary;

(5) Have the authority to establish rules necessary for the management of the library;

(6) Have the authority to prescribe rules for borrowing and returning books;

(7) Have the authority to fix, assess, and collect fines and penalties for the loss or injury to books and other library materials, and for the retention of books and other library materials beyond the period fixed by library rules;

(8) Account for and control, under the rules of the library and the laws of the District of Columbia, the spending of all public funds received by the library;

(9) Make an annual report to the Mayor and the Council of the District of Columbia on the operation of the public library on or before February 1st of each calendar year for the preceding fiscal year;

(10) Select and appoint a professional librarian as librarian of the public library to supervise and manage the day-to-day operations of the library, in accordance with the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (Chapter 6 of Title 1). The librarian of the public library shall appoint assistants and employees the Board deems necessary for the proper operation of the library, in accordance with the provisions of subchapter VIII of Chapter 6 of Title 1;

(11) Encourage and assist in the establishment of community support groups in the branch libraries which may advise the Board on library matters, gather information on the needs of the library, promote improvement of library services, and provide general support of library activities; and

(12) Meet at least once every 2 months.

(b) All monies received by the Board for fines and penalties shall be paid to the District of Columbia Treasurer for credit to the public library's Book Purchase Fund. (June 3, 1896, 29 Stat. 244, ch. 315, § 5; Apr. 1, 1926, 44 Stat. 230, ch. 98, § 5; 1973 Ed., § 37-105; Mar. 3, 1979, D.C. Law 2-139, § 3205(jjj), 25 DCR 5740; Sept. 5, 1985, D.C. Law 6-17, § 2, 32 DCR 3582; Apr. 12, 1997, D.C. Law 11-259, § 316, 44 DCR 1423.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

As to penalty for injuring books, see § 22-3106.

Section references. — This section is referred to in § 1-637.1.

Effect of amendments. — D.C. Law 11-259 added the proviso at the end of (a)(1).

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-17. — See note to § 37-104.

Legislative history of Law 11-259. — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and

transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 12, 1997.

Library is subject to Mayor's authority to reduce expenditures. — The District of Columbia Public Library's status as a statutory independent agency gives it no legitimate claim to exemption from the authority of the Mayor to reduce expenditures throughout the executive branch of the District government in order to balance the budget. Although the library was independent of the Mayor in terms of its policy choices and personnel choices in a plethora of areas that are articulated in this section, it was subject to the Mayor's authority in financial matters under § 37-106. *Hazel v. Barry*, App. D.C., 580 A.2d 110 (1990).

§ 37-106. Mayor authorized to seek appropriations for library expenses.

The Mayor of the District is authorized to include in his annual estimates for appropriation sums as he may deem necessary for the proper maintenance of the library, including branches, for the purchase of land for sites for library buildings, and for the erection and enlargement of necessary library buildings. (June 3, 1896, ch. 315, § 6; Apr. 1, 1926, 44 Stat. 230, ch. 98, § 6; 1973 Ed., § 37-106.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Library is subject to Mayor's authority to reduce expenditures. — The District of Columbia Public Library's status as a statutory independent agency gives it no legitimate claim to exemption from the authority of the Mayor to reduce expenditures throughout the executive branch of the District government in order to balance the budget. Although the library was independent of the Mayor in terms of its policy choices and personnel choices in a plethora of areas that are articulated in § 37-105, it was subject to the Mayor's authority in financial matters under this section. *Hazel v. Barry*, App. D.C., 580 A.2d 110 (1990).

Cited in *Barry v. Bush*, App. D.C., 581 A.2d 308 (1990).

§ 37-106.1. Purchase, rent, and sale of library-related items; use of profits.

The Board shall have power to purchase, rent, and sell library-related items, including, but not limited to, the following: film catalogs and other publications of the library; publications and items of special interest commemorating individuals and events connected with the library; unneeded books; video recordings; reproductions of unique library materials; and promotional items

and souvenirs such as book tote bags, pens, notebooks, and postcards. Any profits realized shall be used to purchase books and other publications. (June 3, 1896, ch. 315, § 7, as added Oct. 8, 1981, D.C. Law 4-38, § 2, 28 DCR 3389; Mar. 14, 1984, D.C. Law 5-55, § 2, 30 DCR 6284.)

Legislative history of Law 4-38. — Law 4-38 was introduced in Council and assigned Bill No. 4-221, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-65 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-55. — Law

5-55 was introduced in Council and assigned Bill No. 5-214, which was referred to the Committee on Libraries, Recreation and Related Youth Affairs. The Bill was adopted on first and second readings on October 18, 1983, and November 1, 1983, respectively. Signed by the Mayor on November 21, 1983, it was assigned Act No. 5-81 and transmitted to both Houses of Congress for its review.

§ 37-106.2. Confidentiality of circulation records.

(a) Circulation records maintained by the public library in the District of Columbia which can be used to identify a library patron who has requested, used, or borrowed identified library materials from the public library and the specific material that patron has requested, used, or borrowed from the public library, shall be kept confidential, except that the records may be disclosed to officers, employees, and agents of the public library to the extent necessary for the proper operation of the public library.

(b)(1) Circulation records shall not be disclosed by any officer, employee, or agent of the public library to a third party or parties, except with the written permission of the affected library patron or as the result of a court order.

(2) A person whose records are requested pursuant to paragraph (1) of this subsection may file a motion in the Superior Court of the District of Columbia requesting that the records be kept confidential. The motion shall be accompanied by the reasons for the request.

(3) Paragraph (1) of this subsection shall not operate to prohibit the officers of the public library from disclosing relevant information on a library patron to the Corporation Counsel of the District of Columbia or legal counsel retained to represent the public library in a civil action.

(4) Within 2 working days after receiving a subpoena issued by the court for public library records, the public library shall send a copy of the subpoena and the following notice, by certified mail, to all affected library patrons:

“Records or information concerning your borrowing records in the public library in the District of Columbia are being sought pursuant to the enclosed subpoena.

“In accordance with the District of Columbia Confidentiality of Library Records Act of 1984, these records will not be released until 10 days from the date this notice was mailed.

“If you desire that these records or information not be released, you must file a motion in the Superior Court of the District of Columbia requesting that the records be kept confidential, and state your reasons for the request. A sample motion is enclosed.

“You may wish to contact a lawyer. If you do not have a lawyer, you may call the District of Columbia Bar Lawyer Referral Service.”

(5) The public library shall not make available any subpoenaed materials until 10 days after the above notice has been mailed.

(6) Upon application of a government authority, the notice required by paragraph (4) of this subsection may be waived by order of an appropriate court if the presiding judge finds that:

(A) The investigation being conducted is within the lawful jurisdiction of the government authority seeking the records;

(B) There is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry; or

(C) There is reason to believe that the notice will result in:

(i) Endangering the life or physical safety of any person;

(ii) Flight from prosecution;

(iii) Destruction of or tampering with evidence;

(iv) Intimidation of potential witnesses; or

(v) Otherwise seriously jeopardizing an investigation or official proceeding.

(7) The term “government authority”, as used in paragraph (6) of this subsection, means any federal, state, or local government agency or department.

(c) The Board of Library Trustees may issue rules necessary to implement this section.

(d) Unless otherwise authorized or required by law, any officer, employee, or agent of the public library who shall violate any provision of this section or any rules issued pursuant to it commits a misdemeanor, and upon conviction shall be punished by a fine of not more than \$300. The aggrieved public library patron may also bring a civil action against the individual violator for actual damages or \$250, whichever is greater, reasonable attorneys’ fees, and court costs. (June 3, 1896, ch. 315, § 8, as added Mar. 13, 1985, D.C. Law 5-128, § 2, 31 DCR 5187.)

Legislative history of Law 5-128. — Law 5-128, the “District of Columbia Confidentiality Library Records Act of 1984,” was introduced in Council and assigned Bill No. 5-401, which was referred to the Committee on Libraries, Recreation and Related Youth Affairs. The Bill was adopted on first and second readings on July

10, 1984, and September 12, 1984, respectively. Signed by the Mayor on October 1, 1984, it was assigned Act No. 5-181 and transmitted to both Houses of Congress for its review.

References in text. — The “District of Columbia Confidentiality of Library Records Act of 1984,” referred to in (b)(4), is D.C. Law 5-128.

§ 37-107. Takoma Park branch — Hours.

Repealed. Sept. 5, 1985, D.C. Law 6-17, § 3, 32 DCR 3582.

Legislative history of Law 6-17. — See note to § 37-104.

§ 37-108. Same — Appropriation.

Repealed. Sept. 5, 1985, D.C. Law 6-17, § 4, 32 DCR 3582.

Legislative history of Law 6-17. — See note to § 37-104.

§ 37-109. Transfer of miscellaneous books to District public library.

Any books of a miscellaneous character no longer required for the use of any executive department, or bureau, or commission of the government, and not deemed an advisable addition to the Library of Congress, shall, if appropriate to the uses of the free public library of the District of Columbia, subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended, be turned over to that library for general use as a part thereof. (Feb. 25, 1903, 32 Stat. 865, ch. 755, § 1; Oct. 31, 1951, 65 Stat. 706, ch. 654, § 2(1); 1973 Ed., § 37-109.)

Cross references. — As to authorization for Librarian of Congress to transfer books to District public library, see 2 U.S.C. § 149.

References in text. — The Federal Prop-

erty and Administrative Services Act of 1949, as amended, referred to in this section, is the Act of June 30, 1949, 63 Stat. 377, ch. 288, as amended.

§ 37-110. Depository of Government publications.

The Public Library of the District of Columbia is hereby constituted a designated depository of governmental publications, and the Superintendent of Documents shall supply to such library one copy of each such publication, in the same form as supplied to other designated depositories. (Sept. 28, 1943, 57 Stat. 568, ch. 243; 1973 Ed., § 37-111.)

TITLE 38. LIENS.

Chapter

1. Mechanics, Materialmen, and Contractors..... §§ 38-101 to 38-126.
2. Garage Keepers and Liverymen..... §§ 38-201 to 38-205.
3. Hospitals..... §§ 38-301 to 38-305.

Cross references. — As to liens for recovery by District of medical care expenses for police and firemen, see § 4-501 et seq.

CHAPTER 1. MECHANICS, MATERIALMEN, AND CONTRACTORS.

Sec.	Sec.
38-101. Mechanic's lien.	38-116. Same — Extent of ground bound by lien.
38-102. Notice.	38-117. Same — Entry of satisfaction.
38-103. Subcontractor's lien — Generally.	38-118. Same — Payment into court and release.
38-104. Same — Conditions and limitations.	38-119. Same — Undertaking to discharge liens before suit.
38-105. Same — Notice to owner.	38-120. Same — Decree against sureties.
38-106. Same — Owner's duty.	38-121. Same — No action by subcontractor against owner.
38-107. Same — Subcontractor entitled to know terms of contract.	38-122. Same — Judgment for deficiency upon sale.
38-108. Same — Advance payments.	38-123. Wharves and lots.
38-109. Same — Priority of lien.	38-124. Artisan's lien — Generally.
38-110. Same — How lien enforced.	38-125. Same — Enforcement by sale.
38-111. Same — Decree of sale.	38-126. Same — Enforcement by bill in equity.
38-112. Same — Subcontractor preferred to contractor.	
38-113. Same — Distribution of sale proceeds.	
38-114. Same — Several buildings.	
38-115. Same — When suit to be commenced.	

§ 38-101. Mechanic's lien.

Every building erected, improved, added to, or repaired by the owner or his agent, and the lot of ground on which the same is erected, being all the ground used or intended to be used in connection therewith, or necessary to the use and enjoyment thereof, to the extent of the right, title, and interest, at that time existing, of such owner, whether owner in fee or of a less estate, or lessee for a term of years, or vendee in possession under a contract of sale, shall be subject to a lien in favor of the contractor with such owner or his duly authorized agent for the contract price agreed upon between them, or, in the absence of an express contract, for the reasonable value of the work and materials furnished for and about the erection, construction, improvement, or repair of or addition to such building, or the placing of any engine, machinery, or other thing therein or in connection therewith so as to become a fixture, though capable of being detached; provided, that the person claiming the lien shall file the notice herein prescribed. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1237; 1973 Ed., § 38-101.)

Cross references. — As to warehouseman's lien, see § 28:7-209 et seq.

As to lien on lands for funds donated by United States to purchase lands for charitable

or reformatory purposes upon abandonment of purpose, see § 32-1203.

As to hotel, motel, and innkeeper's lien, see § 34-102.

As to artisan's lien, see §§ 38-124 to 38-126.

As to motor vehicle lien law, see §§ 40-1001 to 40-1016.

As to landlord's lien, see §§ 45-1413 and 45-1414.

Section references. — This section is referred to in §§ 2-503, 45-1725 and 45-1812.

Purpose of mechanic's lien laws is to protect those who contribute to the value of property by labor or materials. *Chamberlain Metal Weather Strip Co. v. Karrick*, 53 F.2d 928 (D.C. Cir. 1932); *Moore v. Axelrod*, App. D.C., 443 A.2d 40 (1982).

This section is not limited to a certain type of contract and includes cost-plus type contracts. *Sloane v. Malcolm Price, Inc.*, App. D.C., 339 A.2d 43 (1975).

Where the right to a lien appears, the sole question to be determined is whether the claimant proceeded properly to acquire and establish his lien, and, if so, this section should be liberally construed in his favor. *Fidelity Storage Corp. v. Trussed Concrete Steel Co.*, 35 App. D.C. 1 (1910), appeal dismissed, 225 U.S. 716, 32 S. Ct. 836, 56 L. Ed. 1270 (1911).

Right to mechanic's lien is not dependent upon existence of express contract. *Moore v. Axelrod*, App. D.C., 443 A.2d 40 (1982).

And right to lien arises immediately when labor is performed and/or materials are furnished as a consequence of which value is added to the structure involved. *Moore v. Axelrod*, App. D.C., 443 A.2d 40 (1982).

Section prescribes lien amount. — Once a mechanic's lien arises, this section operates to prescribe the amount thereof and if a lien arises from work performed pursuant to a valid contract, the contract price is the measure of liability upon enforcement of the lien. *Sloane v. Malcolm Price, Inc.*, App. D.C., 339 A.2d 43 (1975).

Contractor not entitled to substantial performance. — In a mechanic's lien foreclosure proceeding, a contractor who intentionally fails to perform the contract according to its

terms, and refuses to remedy the defect, is not entitled to the benefit of the doctrine of substantial performance. *Turner v. Henning*, 262 F. 637 (D.D.C. 1920).

Contractor not authorized to remove materials. — Contract for making alterations and additions to a building did not authorize a contractor or subcontractor to remove materials where progress payment had been made in reliance on presence of such equipment. *National Brick & Supply Co. v. Baylor*, 299 F.2d 454 (D.C. Cir. 1962), *aff'd*, 324 F.2d 892 (D.C. Cir. 1963).

Effect of violation of licensing statute. — If the underlying contract to perform plumbing services is unenforceable, for violation of § 2-2106, a mechanic's lien is also unenforceable. *Highpoint Townhouses, Inc. v. Rapp*, App. D.C., 423 A.2d 932 (1980).

Notice estopped contractor in dealings with lessee. — A builder contracting with the lessee to furnish labor and material with notice that he is dealing with the lessee and not the owner is estopped to complain of ignorance of the terms of the lease, where it was a matter of public record. *Lipscomb v. Hough*, 286 F. 775 (D.D.C. 1923).

Lessee was agent of lessor, in ordering improvements, so as to charge interest of lessor in land. *McLean v. Nolan*, 44 App. D.C. 1 (1915).

Insufficient complaint. — Under this section a complaint for removal of a lien alleging that contractor did no work on 1 of 2 lots was insufficient where it failed to allege that no materials were furnished for improvement of the lot. *Clarke v. Huff*, 165 F.2d 247 (D.C. Cir. 1947).

Cited in *Baylor v. Bortolussi*, App. D.C., 194 A.2d 653 (1963); *Kidwell & Kidwell, Inc. v. Galliher & Bros.*, App. D.C., 282 A.2d 575 (1971); *Electrical Equip. Co. v. Security Nat'l Bank*, 606 F.2d 1357 (D.C. Cir. 1979); *Wolf v. Sherman*, App. D.C., 682 A.2d 194 (1996).

§ 38-102. Notice.

Any such contractor wishing to avail himself of the provision aforesaid, whether his claim be due or not, shall file in the Office of the Recorder of Deeds of the District of Columbia during the construction or within 3 months after the completion of such building, improvement, repairs, or addition, or the placing therein or in connection therewith of any engine, machinery, or other thing so as to become a fixture, a notice of his intention to hold a lien on the property hereby declared liable to such lien for the amount due or to become due to him, specifically setting forth the amount claimed, the name of the party against whose interest a lien is claimed, and a description of the property to be charged, and the said Recorder of Deeds shall file said notice and record the same in a book to be kept for the purpose. (Mar. 3, 1901, 31 Stat. 1384, ch. 854,

§ 1238; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 15(a), (b); 1973 Ed., § 38-102.)

Section references. — This section is referred to in § 2-503.

Essential requirements. — Under this section, the amount claimed, the name of the party against whose interest the lien is claimed, and a description of the property to be charged, are essential requirements to valid notice. *Fidelity Storage Corp. v. Trussed Concrete Steel Co.*, 35 App. D.C. 1 (1910), appeal dismissed, 225 U.S. 716, 32 S. Ct. 836, 56 L. Ed. 1270 (1911).

Time for filing. — An original contractor's mechanic's lien must be filed either during the construction of the improvement or within 3 months after its completion. *Harper v. Galliher & Hugueley, Inc.*, 29 F.2d 452 (D.C. Cir. 1928), cert. denied, 278 U.S. 657, 49 S. Ct. 185, 73 L. Ed. 565 (1929).

Where a lienor has named the wrong person

as the alleged owner, notice of mechanic's lien is fatally insufficient. *Chamberlain Metal Weather Strip Co. v. Karrick*, 53 F.2d 928 (D.C. Cir. 1932); *Hartford Accident & Indem. Co. v. A.B.C. Cleaning Contractors*, 350 F.2d 430 (D.C. Cir. 1965).

Lien filing held untimely. *Shalom Baranes Assoc. v. 900 F St. Corp.*, 940 F. Supp. 1 (D.D.C. 1996).

Cited in *Alfred Richards Brick Co. v. Trott*, 23 App. D.C. 284 (1904); *Malcolm Price, Inc. v. Sloane*, App. D.C., 308 A.2d 779 (1973); *Sloane v. Malcolm Price, Inc.*, App. D.C., 339 A.2d 43 (1975); *Electrical Equip. Co. v. Security Nat'l Bank*, 606 F.2d 1357 (D.C. Cir. 1979); *Jenkins v. Parker*, App. D.C., 428 A.2d 367 (1981); *Moore v. Axelrod*, App. D.C., 443 A.2d 40 (1982).

§ 38-103. Subcontractor's lien — Generally.

Any person directly employed by the original contractor, whether as subcontractor, materialman, or laborer, to furnish work or materials for the completion of the work contracted for as aforesaid, shall be entitled to a similar lien to that of the original contractor upon his filing a similar notice with the Recorder of Deeds of the District of Columbia to that above mentioned, subject, however, to the conditions set forth in §§ 38-104 to 38-122. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1239; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 15(a); 1973 Ed., § 38-103.)

Section references. — This section is referred to in § 2-503.

Sub-subcontractor has no right to file a mechanic's lien. *Battista v. Horton, Myers & Raymond*, 128 F.2d 29 (D.C. Cir. 1942).

Materialmen are not subcontractors under this section. *McLean v. Nolan*, 44 App. D.C. 1 (1915).

Subcontractor's right to statement of contract terms waived. — Where subcontractor demanded a statement of terms of the contract between the owner and general contractor and released its mechanic's liens while the demand was never acted upon, the subcontractor waived its right to such statement. *Hutchison Bros. Excavating Co. v. Dworman*, App. D.C., 307 A.2d 760 (1973).

Effect of waiver of remedy. — Subcontractors who waive their remedy against an owner, who refuses to pay the contractor until releases are executed, cannot have the releases set aside and the lien reinstated, when the amount paid the contractor is insufficient to pay the subcon-

tractors in full. *Stevens v. Gordon*, 48 App. D.C. 604 (1919).

Where subcontractor finished the job and wrote letters to the owner and to the supplier of materials stating a willingness to refrain from filing a mechanic's lien if the owner and supplier would sign an acknowledgment that they would protect the subcontractor, there was a meeting of the minds, consideration for such agreement, and the breach imposes liability for loss. *Kidwell & Kidwell, Inc. v. Galliher & Bros.*, App. D.C., 282 A.2d 575 (1971).

Subcontractor's removal of equipment subject to a mechanic's lien was tortious, and the amount paid by the owner for replacing the equipment was not deductible from the unpaid balance due the prime contractor. *National Brick & Supply Co. v. Baylor*, 299 F.2d 454 (D.C. Cir. 1962), aff'd, 324 F.2d 892 (D.C. Cir. 1963).

Cited in *Winter v. Hazen-Latimer Co.*, 42 App. D.C. 469 (1914); *Woodward & Lothrop*,

Inc. v. Union Trust Co., 262 F. 627 (D.D.C. 1920); Campbell v. Cumbari Assocs., 115 WLR 1729 (Super. Ct. 1987).

§ 38-104. Same — Conditions and limitations.

All such liens in favor of parties so employed by the contractor shall be subject to the terms and conditions of the original contract except such as shall relate to the waiver of liens and shall be limited to the amount to become due to the original contractor and be satisfied, in whole or in part, out of said amount only; and if said original contractor, by reason of any breach of the contract on his part, shall be entitled to recover less than the amount agreed upon in his contract, the liens of said parties so employed by him shall be enforceable only for said reduced amount, and if said original contractor shall be entitled to recover nothing said liens shall not be enforceable at all. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1240; 1973 Ed., § 38-104.)

Section references. — This section is referred to in § 38-103.

Payments made by the owner to subcontractors through the general contractor, after subcontractor's filing of a lien, were considered payments to the general contractor. *Spencer v. Old Stein Grill*, 194 F. Supp. 274 (D.D.C. 1961).

Cited in *National Brick & Supply Co. v. Baylor*, 324 F.2d 892 (D.C. Cir. 1963); *Ritzenberg v. Noland Co.*, 364 F.2d 667 (D.C. Cir. 1966); *Washington Concrete Sales Corp. v. Morrisette*, 377 F.2d 137 (D.C. Cir. 1966).

§ 38-105. Same — Notice to owner.

The said subcontractor or other person employed by the contractor as aforesaid, besides filing a notice with the Recorder of Deeds of the District of Columbia as aforesaid, shall serve the same upon the owner of the property upon which the lien is claimed, by leaving a copy thereof with said owner or his agent, if said owner or agent be a resident of the District, or if neither can be found, by posting the same on the premises; and on his failure to do so, or until he shall do so, the said owner may make payments to his contractor according to the terms of his contract, and to the extent of such payments the lien of the principal contractor shall be discharged and the amount for which the property shall be chargeable in favor of the parties so employed by him reduced. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1241; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 15(a); 1973 Ed., § 38-105.)

Section references. — This section is referred to in § 38-103.

To protect his right to enforce a lien, a third party doing work on real property, who has reason to believe that the party who arranged for his services may be acting as a

contractor rather than as agent of the owner, need only give notice to the owner. *Moore v. Axelrod*, App. D.C., 443 A.2d 40 (1982).

Cited in *Harper v. Galliher & Huguely, Inc.*, 29 F.2d 452 (D.C. Cir. 1928), cert. denied, 278 U.S. 657, 49 S. Ct. 185, 73 L. Ed. 565 (1929).

§ 38-106. Same — Owner's duty.

After notice shall be filed by said party employed under the original contractor and a copy thereof served upon the owner or his agent as aforesaid, the owner shall be bound to retain out of any subsequent payments becoming due to the contractor a sufficient amount to satisfy any indebtedness due from said contractor to the said subcontractor, or other person so employed by him, secured by lien as aforesaid, otherwise the said party shall be entitled to enforce his lien to the extent of the amount so accruing to the principal contractor. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1242; 1973 Ed., § 38-106.)

Section references. — This section is referred to in § 38-103.

Purpose and effect of section are not to expose the owner to liability greater than that owed to the contractor. *Ritzenberg v. Noland Co.*, 364 F.2d 667 (D.C. Cir. 1966).

This section limits the subcontractor's right to a lien upon money due the contractor from the owner at the time notice is given the owner. *Winter v. Hazen-Latimer Co.*, 42 App. D.C. 469 (1914).

Payments made by the owner to subcontractors through the general contractor, after subcontractor's filing of a lien, were con-

sidered payments to the general contractor. *Spencer v. Old Stein Grill*, 194 F. Supp. 274 (D.D.C. 1961).

Mechanic's lienors are not entitled to satisfy their liens out of sums which the owner had paid the contractor. *National Brick & Supply Co. v. Baylor*, 299 F.2d 454 (D.C. Cir. 1962), *aff'd*, 324 F.2d 892 (D.C. Cir. 1963).

Cited in *Union Wesley A.M.E. Zion Church v. Rider Enterprises, Inc.*, App. D.C., 369 A.2d 608 (1977); *Electrical Equip. Co. v. Security Nat'l Bank*, 606 F.2d 1357 (D.C. Cir. 1979).

§ 38-107. Same — Subcontractor entitled to know terms of contract.

Any subcontractor or other person employed by the contractor as aforesaid shall be entitled to demand of the owner or his authorized agent a statement of the terms under which the work contracted for is being done and the amount due or to become due to the contractor executing the same, and if the owner or his agent shall fail or refuse to give the said information, or willfully state falsely the terms of the contract or the amounts due or unpaid thereunder, the said property shall be liable to the lien of the said party demanding said information, in the same manner as if no payments had been made to the contractor before notice served on the owner as aforesaid. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1243; 1973 Ed., § 38-107.)

Section references. — This section is referred to in § 38-103.

Subcontractor is chargeable with notice of terms of general contract. *National Brick & Supply Co. v. Baylor*, 299 F.2d 454 (D.C. Cir. 1962), *aff'd*, 324 F.2d 892 (D.C. Cir. 1963).

The subcontractor is chargeable with notice of the terms and conditions of the prime contract and, in the absence of information to the contrary, the court will assume such notice. *Moore v. Axelrod*, App. D.C., 443 A.2d 40 (1982).

Real estate broker may be contractor within the meaning of this section. *Moore v. Axelrod*, App. D.C., 443 A.2d 40 (1982).

Subcontractor's right to statement of contract terms waived. — Where subcontractor demanded a statement of terms of the contract between the owner and general contractor and released its mechanic's liens while the demand was never acted upon, the subcontractor waived its right to such statement. *Hutchison Bros. Excavating Co. v. Dworman*, App. D.C., 307 A.2d 760 (1973).

Cited in *Winter v. Hazen-Latimer Co.*, 42 App. D.C. 469 (1914); *Washington Concrete Sales Corp. v. Morrisette*, 377 F.2d 137 (D.C. Cir. 1966).

§ 38-108. Same — Advance payments.

If the owner, for the purpose of avoiding the provisions hereof, and defeating the lien of the subcontractor or other person employed by the contractor, as aforesaid, shall make payments to the contractor in advance of the time agreed upon therefor in the contract, and the amount still due or to become due to the contractor shall be insufficient to satisfy the liens of the subcontractors or others so employed by the contractor, the property shall remain subject to said liens in the same manner as if such payments had not been made. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1244; 1973 Ed., § 38-108.)

Section references. — This section is referred to in § 38-103.

Bad faith not presumed. — Where owner makes advance payments to the general contractor prior to filing of notice of liens by subcontractors, bad faith cannot be presumed

from mere fact of advance payments, and something more is necessary to support that inference in order to establish owner's liability to subcontractors under this section. *Merrill v. B.R. Acker Co.*, 142 F.2d 102 (D.C. Cir. 1944).

§ 38-109. Same — Priority of lien.

The lien hereby given shall be preferred to all judgments, mortgages, deeds of trusts, liens, and incumbrances which attach upon the building or ground affected by said lien subsequently to the commencement of the work upon the building, as well as to conveyances executed, but not recorded, before that time, to which recording is necessary, as to third persons; except that nothing herein shall affect the priority of a mortgage or deed of trust given to secure the purchase money for the land, if the same be recorded within 10 days from the date of the acknowledgment thereof. When a mortgage or deed of trust of real estate securing advances thereafter to be made for the purpose of erecting buildings and improvements thereon is given, or when an owner of lands contracts with a builder for the sale of lots and the erection of buildings thereon, and agrees to advance moneys toward the erection of such buildings, the lien hereinbefore authorized shall have priority to all advances made after the filing of said notices of lien, and the lien shall attach to the right, title, and interest of the owner in said building and land to the extent of all advances which shall have become due after the filing of such notice of such lien, and shall also attach to and be a lien on the right, title, and interest of the person so agreeing to purchase said land at the time of the filing of said notices of lien. When a building shall be erected or repaired by a lessee or tenant for life or years, or a person having an equitable estate or interest in such building or land on which it stands, the lien created by this chapter shall only extend to and cover the interest or estate of such lessee, tenant, or equitable owners. (Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1245; 1973 Ed., § 38-109.)

Section references. — This section is referred to in § 38-103.

This section grants a mechanic's lien priority over a construction loan secured by a deed of trust recorded prior to the commencement of work only with respect to advances made after the mechanic files a notice of

intention to assert a lien. *Electrical Equip. Co. v. Security Nat'l Bank*, 606 F.2d 1357 (D.C. Cir. 1979).

Security interests granted priority. — The first sentence of this section has long been interpreted as a grant of priority over mechanics' liens to security interests that attach before

the commencement of work. *Electrical Equip. Co. v. Security Nat'l Bank*, 606 F.2d 1357 (D.C. Cir. 1979).

Mechanic's lien does not take precedence over a recorded deed of trust where the mechanic's lienor did not commence work until after the construction lender recorded the deed of trust. *Waco Scaffold & Shoring Co. v. 425 Eye St. Assocs.*, App. D.C., 355 A.2d 780 (1976).

Purchase money deed of trust priority unaffected. — The relation back preference of a mechanic's lien does not affect the priority of a recorded purchase-money deed of trust. *Guardian Fed. Sav. & Loan Ass'n v. Suskind*, App. D.C., 265 A.2d 295 (1970).

Advances postdating the filing of the mechanic's lien are made inferior to such a lien by this section. *Electrical Equip. Co. v. Security Nat'l Bank*, 606 F.2d 1357 (D.C. Cir. 1979).

Automatically accruing interest. — The priority granted by the second sentence of this section is limited to "advance," and automatically accruing interest cannot be said to be "advanced." *Electrical Equip. Co. v. Security Nat'l Bank*, 606 F.2d 1357 (D.C. Cir. 1979).

Cited in *Deland v. Wagner*, 64 F.2d 552 (D.C. Cir. 1933).

§ 38-110. Same — How lien enforced.

The proceeding to enforce the lien hereby given shall be a bill in equity, which shall contain a brief statement of the contract on which the claim is founded, the amount due thereon, the time when the notice was filed with the Recorder of Deeds, and a copy thereof served on the owner or his agent, if so served, and the time when the building or the work thereon was completed, with a description of the premises and other material facts; and shall pray that the premises be sold and the proceeds of sale applied to the satisfaction of the lien. If such suit be brought by any person entitled, other than the principal contractor, the latter shall be made a party defendant, as well as all other persons who may have filed notices of liens, as aforesaid. All or any number of persons having liens on the same property may join in one suit, their respective claims being distinctly stated in separate paragraphs; and if several suits are brought by different claimants and are pending at the same time, the court may order them to be consolidated. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1246; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 15(b); 1973 Ed., § 38-110.)

Cross references. — As to service by publication on nonresidents and absent defendants, see § 13-336.

Section references. — This section is referred to in §§ 38-103 and 38-123.

Bill in equity. — A subcontractor who is entitled to a mechanics' lien must enforce it by a bill in equity. *Woodward & Lothrop, Inc. v. Union Trust Co.*, 262 F. 627 (D.D.C. 1920).

A bill in equity is the proper proceeding to enforce a mechanic's lien against trustees under deed of trust. *Roth v. Eisinger Mill & Lumber Co.*, 70 F.2d 294 (D.C. Cir. 1934).

Observance of limitations required. — This section provides the means for enforcement of liens only when filed within the limitations of the statutes. *Harper v. Galliher &*

Huguely, Inc., 29 F.2d 452 (D.C. Cir. 1928), cert. denied, 278 U.S. 657, 49 S. Ct. 185, 73 L. Ed. 565 (1929).

Fact that judgment foreclosing subcontractor's lien against owners was less than the amount claimed against the general contractor did not automatically reopen or validate judgment against general contractor. *Redding & Co. v. Russwine Constr. Corp.*, 463 F.2d 929 (D.C. Cir. 1972).

Cited in *Bruchner-Mitchell, Inc. v. Sun Indem. Co.*, 82 F.2d 434 (D.C. Cir.), cert. denied, 298 U.S. 677, 56 S. Ct. 941, 80 L. Ed. 1398 (1936); *John W. Johnson, Inc. v. 2500 Wisconsin Ave., Inc.*, 231 F.2d 761 (D.C. Cir. 1956); *Curtis v. Chambers*, 310 F.2d 857 (D.C. Cir. 1962).

§ 38-111. Same — Decree of sale.

If the right of the complainant, or of any of the parties to the suit, to the lien herein provided for shall be established, the court shall decree a sale of the land and premises or the estate and interest therein of the person who, as owner, contracted for the erection, repair, improvement of, or addition to the building, as aforesaid. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1247; 1973 Ed., § 38-111.)

Section references. — This section is referred to in § 38-103.

Cited in *Berenter v. Staggers*, 362 F.2d 971 (D.C. Cir. 1966).

§ 38-112. Same — Subcontractor preferred to contractor.

If the original contractor and the persons contracting or employed under him shall both have filed notices of liens, as aforesaid, the latter shall first be satisfied out of the proceeds of sale before the original contractor, but not in excess of the amount due him, and the balance, if any, of said amount shall be paid to him. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1248; 1973 Ed., § 38-112.)

Section references. — This section is referred to in § 38-103.

§ 38-113. Same — Distribution of sale proceeds.

If one, or some only, of the persons employed under the original contractor shall have served notice on the owner, as aforesaid, before payments made by him to the original contractor, said party or parties shall be entitled to priority of satisfaction out of said proceeds to the amount of such payments; but, subject to this provision, if the proceeds of sale, after paying there out the costs of the suit, shall be insufficient to satisfy the liens of said parties employed under the original contractor the said proceeds shall be distributed ratably among them to the extent of the payments accruing to the original contractor subsequently to the service of notice on the owner by said parties, as aforesaid. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1249; 1973 Ed., § 38-113.)

Section references. — This section is referred to in § 38-103.

§ 38-114. Same — Several buildings.

In case of labor done or materials furnished for the erection or repair of 2 or more buildings joined together and owned by the same person or persons, it shall not be necessary to determine the amount of work done or materials furnished for each separate building, but only the aggregate amount upon all the buildings so joined, and the decree may be for the sale of all the buildings and the land on which they are erected as one building, or they may be sold separately if it shall seem best to the court. (Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1250; 1973 Ed., § 38-114.)

Section references. — This section is referred to in § 38-103.

Scope of lien. — One mechanic's lien should cover no more than 1 building, except where there are 2 or more buildings joined together and owned by a single person. *Alfred Richards Brick Co. v. Trott*, 23 App. D.C. 284 (1904).

No prejudice upon release of lien. — Where each lienor files separate notices of lien, each in the full amount due, against 2 lots, the trustees are not prejudiced by the release of 1 lien. *Roth v. Eisinger Mill & Lumber Co.*, 70 F.2d 294 (D.C. Cir. 1934).

§ 38-115. Same — When suit to be commenced.

Any person, entitled to a lien, as aforesaid, may commence his suit to enforce the same at any time within a year from and after the filing of the notice aforesaid or within 6 months from the completion of the building or repairs aforesaid, on his failure to do which the said lien shall cease to exist, unless his said claim be not due at the expiration of said periods, in which case the action must be commenced within 3 months after the said claim shall have become due. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1251; 1973 Ed., § 38-115.)

Section references. — This section is referred to in § 38-103.

Date of abandonment. — In a contractor's abandonment of a project prior to completion,

the applicable time period for asserting mechanic's lien runs from the date of abandonment. *Malcolm Price, Inc. v. Sloane*, App. D.C., 308 A.2d 779 (1973).

§ 38-116. Same — Extent of ground bound by lien.

If there be any contest as to the dimensions of the ground claimed to be subjected to the lien aforesaid, the court shall determine the same upon the evidence and describe the same in the decree of sale. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1252; 1973 Ed., § 38-116.)

Section references. — This section is referred to in § 38-103.

§ 38-117. Same — Entry of satisfaction.

Whenever any person having a lien by virtue hereof shall have received satisfaction of his claim and cost, he shall, on the demand, and at the cost of the person interested, enter said claim satisfied, in the clerk's office aforesaid, and on his failure or refusal so to do he shall forfeit \$50 to the party aggrieved, and all damages that the latter may have sustained by reason of such failure or refusal. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1253; 1973 Ed., § 38-117.)

Section references. — This section is referred to in § 38-103.

§ 38-118. Same — Payment into court and release.

In any suit to enforce a lien hereunder, the owner of the building and premises to which such lien may have attached, as aforesaid, may be allowed to pay into court the amount claimed by the lienor, and such additional amount, to cover interest and costs, as the court may direct, or he may file a written undertaking, with 2 or more sureties, to be approved by the court, to the effect that he and they will pay the judgment that may be recovered and

costs, which judgment shall be rendered against all the persons so undertaking. On the payment of said money into court, or the approval of such undertaking, the property shall be released from such lien, and any money so paid in shall be subject to the final decree of the court. No such undertaking shall be approved by the court until the complainant shall have had at least 2 days notice of the defendant's intention to apply to the court therefor, which notice shall give the names and residences of the persons intended to be offered as sureties and the time when the motion for such approval will be made, and such sureties shall make oath, if required, that they are worth, over and above all debts and liabilities, double the amount of said lien. The complainant may appear and object to such approval. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1254; 1973 Ed., § 38-118.)

Section references. — This section is referred to in §§ 38-103, 45-1725 and 45-1812.

Purpose of this section is to enable the owner, against whose building or fixtures a lien has been asserted, to be relieved of the embarrassment of the lien through the payment into court of a sum equal to the amount of the lien or the filing of an undertaking to cover that amount. *Woodward & Lothrop, Inc. v. Union Trust Co.*, 262 F. 627 (D.D.C. 1920).

No notice is required under this section

where a cash payment is made by the owner. *Woodward & Lothrop, Inc. v. Union Trust Co.*, 262 F. 627 (D.D.C. 1920).

Effect of filing bond. — A bond filed by the purchaser of realty for release of mechanic's lien allows the foreclosure suit to be dismissed. *Maiatico v. Fletcher*, 39 F.2d 295 (D.C. Cir. 1930).

Cited in *Deland v. Wagner*, 64 F.2d 552 (D.C. Cir. 1933).

§ 38-119. Same — Undertaking to discharge liens before suit.

Such an undertaking as above mentioned may be offered before any suit brought in order to discharge the property from existing liens, in which case notice shall be given as aforesaid to the parties whose liens it is sought to have discharged, and the same proceedings shall be had as above directed in relation to the undertaking to be given after the commencement of the suit, and said undertaking shall be to the effect that the owner and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1255; 1973 Ed., § 38-119.)

Section references. — This section is referred to in § 38-103.

Direct action to remove lien negated. — This section's prescription of a specific method for removal of mechanic's liens from the records negates a direct action to remove the lien. *Clarke v. Huff*, 165 F.2d 247 (D.C. Cir. 1947).

Surety's obligation under mechanic's lien undertaking is confined to the purpose of the mechanic's lien statute. *Hartford Accident & Indem. Co. v. A.B.C. Cleaning Contractors*, 350 F.2d 430 (D.C. Cir. 1965).

§ 38-120. Same — Decree against sureties.

If such undertaking be approved before any suit brought, such suit shall be a suit in equity against the owner, to which the sureties may be made parties; if the undertaking be approved after suit brought, the said sureties shall ipso facto become parties to the suit, and in either case the decree of the court shall

be against the sureties as well as the owner. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1256; 1973 Ed., § 38-120.)

Section references. — This section is referred to in § 38-103.

Where owner and surety filed an under-

taking and release the lien, the decree was properly rendered against them. *Deland v. Wagner*, 64 F.2d 552 (D.C. Cir. 1933).

§ 38-121. Same — No action by subcontractor against owner.

No subcontractor, materialman, or workman employed under the original contractor shall be entitled to a personal judgment or decree against the owner of the premises for the amount due to him from said original contractor, except upon a special promise of such owner, in writing, for a sufficient consideration, to be answerable for the same. (Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1257; 1973 Ed., § 38-121.)

Section references. — This section is referred to in § 38-103.

This section is applicable to the owner's contract with the contractor and the latter's contract with the subcontractor to be performed in Maryland. *Mathews v. Libbey Bros.*, 42 App. D.C. 272 (1914).

Promise need not be in writing when it is in an original or separate agreement to pay and not the mere assumption of another's debt. *Thomas v. Ehrmantraut*, App. D.C., 111 A.2d 623 (1955).

Enforceable oral promise to pay. — Owner's oral promise to pay subcontractors amounts due them from contractor when it abandoned project, in exchange for subcontractors' agreement to continue working toward ultimate completion of project, is enforceable despite provision of this section. *Union Wesley A.M.E. Zion Church v. Rider Enterprises, Inc.*, App. D.C., 369 A.2d 608 (1977).

Cited in *Jones v. Guice*, App. D.C., 57 A.2d 190 (1948); *Arthur Snowden Co. v. Meehan*, App. D.C., 118 A.2d 687 (1956).

§ 38-122. Same — Judgment for deficiency upon sale.

In any suit brought to enforce a lien by virtue of the provisions aforesaid, if the proceeds of the property affected thereby shall be insufficient to satisfy such lien, a personal judgment for the deficiency may be given in favor of the lien or against the owner of the premises or the original contractor, as the case may be, whichever contracted with him for the labor or materials furnished by him, provided such person be a party to the suit and shall have been personally served with process therein. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1258; 1973 Ed., § 38-122.)

Section references. — This section is referred to in § 38-103.

Where property was sold under a deed of trust, a personal judgment for the deficiency

was properly rendered against the former owners. *Davidson v. E.F. Brooks Co.*, 46 App. D.C. 457, cert. denied, 245 U.S. 665, 38 S. Ct. 63, 62 L. Ed. 538 (1917).

§ 38-123. Wharves and lots.

Any person who shall furnish materials or labor in filling up any lot or in constructing any wharf thereon, or dredging the channel of the river in front of any wharf, under any contract with the owner, shall be entitled to a lien for the value of such work or materials on said lot and wharf upon the same conditions and to be enforced in the same manner as in the case of work done in the

erection of buildings, as provided in § 38-110. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1259; 1973 Ed., § 38-123.)

§ 38-124. Artisan's lien — Generally.

Any mechanic or artisan who shall make, alter, or repair any article of personal property at the request of the owner shall have a lien thereon for his just and reasonable charges for his work done and materials furnished, and may retain the same in his possession until said charges are paid; but if possession is parted with by his consent such lien shall cease. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1260; 1973 Ed., § 38-124.)

Section references. — This section is referred to in § 38-125.

Superior Court has jurisdiction to enforce artisan's lien, notwithstanding that

lien was enforced according to due course of proceedings in equity and that the Court has no general equity jurisdiction. *Villacres v. Haddad*, App. D.C., 184 A.2d 634 (1962).

§ 38-125. Same — Enforcement by sale.

If the amount due and for which a lien is given by § 38-124 is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of \$50, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at the public auction, after giving notice once a week for 3 successive weeks in some daily newspaper published in the District, and the proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the remainder, if any, shall be paid over to the owner of the property. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1263; Dec. 8, 1970, 84 Stat. 1397, Pub. L. 91-537, § 4(a); 1973 Ed., § 38-125.)

§ 38-126. Same — Enforcement by bill in equity.

If the value of the property so subject to lien shall exceed the sum of \$50, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand against the defendant from whom such claim is due, and may have execution therefor as at law. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1264; Dec. 8, 1970, 84 Stat. 1397, Pub. L. 91-537, § 4(a)(1); 1973 Ed., § 38-126.)

This section restates common law and provides a means of enforcement. *Villacres v. Haddad*, App. D.C., 184 A.2d 634 (1962).

CHAPTER 2. GARAGE KEEPERS AND LIVERYMEN.

Sec.

38-201. Liveryman's lien.

38-202. Lien for storage, repairs and supplies
for motor vehicles.

Sec.

38-203. Enforcement of lien by sale.

38-204. Application of proceeds of sale.

38-205. Limitation on lien for storage.

§ 38-201. Liveryman's lien.

It shall be lawful for all persons keeping or boarding any animals at livery within the District, under any agreement with the owner thereof, to detain such animals until all charges under such agreement for the care, keep, or board of such animals shall have been paid; provided, however, that before enforcing the lien hereby given notice in writing shall be given to such owner in person or by registered mail at his last-known place of residence of the amount of such charges and the intention to detain such animal or animals until such charges shall be paid. (June 3, 1952, 66 Stat. 96, ch. 361, § 1; 1973 Ed., § 38-204.)

Section references. — This section is referred to in § 38-203.

§ 38-202. Lien for storage, repairs and supplies for motor vehicles.

(a) All persons storing, repairing, or furnishing supplies of or concerning motor vehicles including trailers shall have a lien for their agreed or reasonable charges for such storage, repairs, and supplies when such charges are incurred by an owner or conditional vendee or chattel mortgagor (including a grantor of deed of trust in lieu of mortgage) of such motor vehicle, and may detain such motor vehicle at any time they may have lawful possession thereof. Such lien shall have priority over every security interest and other lien or right in or to the vehicle except as hereinafter limited with respect to claims for storage. Before enforcing such lien, notice in writing shall be given to the title holder, every secured party and other lien holder shown by the certificate of title or registry of the vehicle, and any other persons known to claimant who have any interest in or lien upon the vehicle. Such notice shall be delivered personally or sent by registered mail to the last-known address of the person to whom given, shall state that a lien is claimed for the charges therein set forth or thereto attached, and shall demand payment thereof. There shall be incorporated in or attached to said notice a statement of particulars of the charge or charges for which a lien is claimed, to which may be added to a claim for storage of the vehicle from the date of said notice to the date of payment or sale, which amount shall be set forth at a daily or weekly rate which shall not be in excess of charges prevailing at the time for similar storage, and shall not be in excess of \$3 per day or \$21 per week, which additional charge shall in no event cover a period in excess of 90 days.

(b) As used in this section, "security interest" and "secured party" have the same meanings as those given to the terms by §§ 28:1-201 and 28:9-105 (1)

(m), respectively. (June 3, 1952, 66 Stat. 97, ch. 361, § 2; Dec. 30, 1963, 77 Stat. 770, Pub. L. 88-243, § 5; 1973 Ed., § 38-205.)

Cross references. — As to service by publication on nonresidents and absent defendants, see § 13-336.

As to enforcement of liens not subject to this section, see § 38-109.

As to motor vehicle title liens, see §§ 40-1001 to 40-1016.

Section references. — This section is referred to in §§ 38-203 and 38-205.

After one had delivered possession of an automobile to the owner, the garage keeper's lien was in a state of suspended animation and was not extinguished. *Flanzbaum v. Gordon*, App. D.C., 194 A.2d 125 (1963).

Garage keeper's lien is not lost by releasing the automobile and may be enforced if he should obtain lawful possession. *Flanzbaum v. Gordon*, App. D.C., 194 A.2d 125 (1963).

Payment for storage of vehicle during repair. — Where automobile owner contracted with a garage keeper for small repair job and left it with garage keeper who was required to provide valuable space for its storage over the requisite time for repair, a quasi contract or promise implied in law to pay for such storage was created and that obligation was recognizable under this section. *Hill & Sanders, Inc. v. Keneipp*, App. D.C., 109 A.2d 141 (1954).

Right to detain auto until storage charges paid. — Garageman who had, in absence of proof of principal-agent relationship with seller, a lien for all reasonable charges for storage of a repossessed automobile had the right to detain the automobile until storage charges had been paid. *Jackson v. Greenfield*, App. D.C., 198 A.2d 916 (1964).

Garage owner not guilty of conversion for failure of notice. — Where garage owner, after repairing conditional vendee's automobile, turned it over to the holder of the conditional sales contract and collected repair charges, the garage owner was not guilty of conversion in failing to follow the statutory notice requirements before enforcing the lien. *Bullock v. Young*, App. D.C., 118 A.2d 917 (1956).

Maryland repairman has a right to repossess District resident's car in the District. *O'Donnell v. S & R, Inc.*, App. D.C., 369 A.2d 168 (1977).

Cited in *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979); *Franklin Inv. Co. v. District of Columbia*, 110 WLR 229 (Super. Ct. 1982).

§ 38-203. Enforcement of lien by sale.

(a) If the amount due and for which a lien is given by § 38-201 or 38-202 hereof is not paid by the end of 30 days after the giving of notice, then the party entitled to such lien may proceed to sell the property so subject to lien at public auction, after giving notice once a week for 3 successive weeks in some daily newspaper published in the District. Said advertisement shall set forth the date, time, and place of sale, which shall not be less than 15 days from date of the 1st publication of such notice, that the purpose of the sale is to satisfy a lien, the amount for which said lien is claimed, including storage to date of sale if allowable, the names of all interested parties, and a description of the chattel, including, in the case of vehicles, the make, type, year and model number, serial number and engine number, if any, and State or District license number and year.

(b) Any person selling such property in order to satisfy a fraudulent, excessive, or unreasonable lien shall be guilty of a conversion of such property and liable to the owner in damages therefor. (June 3, 1952, 66 Stat. 97, ch. 361, § 3; 1973 Ed., § 38-206.)

Cross references. — As to service by publication on nonresidents and absent defendants, see § 13-336.

Garage owner not guilty of conversion

for failure of notice. — Where garage owner turned auto over to the holder of the conditional sales contract and collected repair charges, the garage owner was not guilty of conversion in

failing to follow the statutory notice requirements before enforcing the lien. *Bullock v. Young*, App. D.C., 118 A.2d 917 (1956).

§ 38-204. Application of proceeds of sale.

The proceeds of such sale shall be applied:

- (1) To the expenses of such sales and the discharge of such lien;
- (2) To payment of other liens, if any, in the order of their priority; and
- (3) To the owner of the property. (June 3, 1952, 66 Stat. 97, ch. 361, § 4; 1973 Ed., § 38-207.)

§ 38-205. Limitation on lien for storage.

To the extent that any lien provided for in this chapter is based on a claim for storage of a motor vehicle in excess of \$150, such lien shall be, as to such excess, inferior to the lien of a conditional vendor or chattel mortgagee (as defined in § 38-202) claiming under an instrument recorded on a date earlier than the period to which such charges are attributable. (June 3, 1952, 66 Stat. 97, ch. 361, § 5; 1973 Ed., § 38-208.)

Cited in *Franklin Inv. Co. v. District of Columbia*, 110 WLR 229 (Super. Ct. 1982).

CHAPTER 3. HOSPITALS.

Sec.	Sec.
38-301. Hospital's lien for services on recovery in accident cases.	38-304. Permission to examine hospital records.
38-302. Notice.	38-305. Recorder to provide lien docket.
38-303. Liability for failure to pay hospital's lien.	

§ 38-301. Hospital's lien for services on recovery in accident cases.

Every association, corporation, or other institution, and any agency of the United States or the District of Columbia, maintaining a hospital in the District of Columbia, which shall furnish medical or other service to any patient injured by reason of an accident causing injuries not covered by the Employees' Compensation Act or the Workmen's Compensation Act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien upon that part going or belonging to such patient, of any recovery or sum had or collected or to be collected by such patient, or by his heirs or personal representatives in the case of his death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care, and maintenance of such patient in such hospital up to the date of payment of such damages; provided, that the lien herein set forth shall not be applied or considered valid against anyone suffering injuries coming under the Employees' Compensation Act or the Workmen's Compensation Act in this District. (June 30, 1939, 53 Stat. 990, ch. 255, § 1; June 19, 1948, 62 Stat. 496, ch. 525, § 1; 1973 Ed., § 38-301.)

References in text. — The Employees' Compensation Act, referred to in this section, refers to the Act of September 7, 1916 which is codified in 5 U.S.C. § 8101 et seq.

The Workmen's Compensation Act refers to former Chapter 5 of Title 36, which was repealed by the Act of July 1, 1980, D.C. Law 3-77, § 46.

§ 38-302. Notice.

No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the Office of the Recorder of Deeds of the District of Columbia in a docket provided for such liens, prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries sustained prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm, or corporation

against such liability, where the name of such insurance carrier is ascertained. (June 30, 1939, 53 Stat. 990, ch. 255, § 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 16; 1973 Ed., § 38-302.)

Cross references. — As to service by publication on nonresidents and absent defendants, see § 13-336.

§ 38-303. Liability for failure to pay hospital's lien.

Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to his attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement after paying the amount of any prior liens, shall for a period of one year from the date of payment to such patient or his heirs, attorneys, or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was entitled to receive as aforesaid; and any such association, corporation, or other institution, and any agency of the United States or the District of Columbia, maintaining such hospital, may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment. (June 30, 1939, 53 Stat. 990, ch. 255, § 3; June 19, 1948, 62 Stat. 496, ch. 525, § 2; 1973 Ed., § 38-303.)

§ 38-304. Permission to examine hospital records.

Any person or persons, firm or firms, corporation or corporations legally liable for such lien or against whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the ledger entries and similar records of any such association, corporation, or other institution or body, and of any agency of the United States or the District of Columbia, maintaining such hospital for the purpose of ascertaining the basis for such lien. (June 30, 1939, 53 Stat. 991, ch. 255, § 4; June 19, 1948, 62 Stat. 496, ch. 525, § 3; 1973 Ed., § 38-304.)

§ 38-305. Recorder to provide lien docket.

The Recorder of Deeds of the District of Columbia shall provide a suitable bound book to be called the hospital lien docket, in which, upon the filing of any lien claim under the provisions of this chapter, he shall enter the name of the injured person, the name of the person, firm, or corporation alleged to be liable for the injuries, the date of the accident, and the name of the hospital or other institution or agency making the claim. The Recorder of Deeds shall index the same in the name of the injured person and shall charge and collect a fee of \$1 for recording, indexing, and releasing the lien so filed. (June 30, 1939, 53 Stat.

991, ch. 255, § 5; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); June 19, 1948, 62 Stat. 496, ch. 525, § 4; May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 16; 1973 Ed., § 38-305.)

TITLE 39. MILITARY.

Chapter

- 1. Composition, Organization, and Control..... §§ 39-101 to 39-109.
- 2. Armament, Equipment, and Supplies..... §§ 39-201 to 39-217.
- 3. Commissioned Officers..... §§ 39-301 to 39-313.
- 4. Noncommissioned Officers..... § 39-401.
- 5. Enlisted Personnel..... §§ 39-501 to 39-502.
- 6. Active Military Duty..... §§ 39-601 to 39-607.
- 7. Pay and Allowances..... §§ 39-701 to 39-706.
- 8. Courts-Martial..... §§ 39-801 to 39-809.
- 9. Miscellaneous Provisions..... §§ 39-901 to 39-906.

CHAPTER 1. COMPOSITION, ORGANIZATION, AND CONTROL.

Sec.	Sec.
39-101. Militia; persons to be enrolled.	39-106. Organized militia; volunteer service; designation.
39-102. Exemptions from service.	39-107. Reserve corps; organization; composition.
39-103. Assessors to make list of persons liable to enrollment.	39-108. Disbanding companies below minimum strength.
39-104. Duty of enrolled militia; police and fire department personnel.	39-109. President to be Commander-in-Chief.
39-105. Ordering enrolled militia into service.	

§ 39-101. Militia; persons to be enrolled.

Every able-bodied male citizen resident within the District of Columbia, of the age of 18 years and under the age of 45 years, excepting persons exempted by § 39-102, and idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia. Persons so convicted after enrollment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him. (Mar. 1, 1889, 25 Stat. 772, ch. 328, § 1; 1973 Ed., § 39-101.)

Cross references. — As to National Guard, see Title 32, U.S. Code.

§ 39-102. Exemptions from service.

In addition to the persons exempted from enrollment in the militia by the general laws of the United States, the following persons shall also be exempted from enrollment in the militia of the District of Columbia, namely: officers of the government of the District of Columbia; judges and officers of the courts of the District of Columbia; officers who have held commissions in the regular or volunteer Army, Navy, or Air Force of the United States; officers who have served for a period of 5 years in the militia of the District of Columbia or of any state of the United States; ministers of the gospel; practicing physicians; and conductors and engine-drivers of railroad trains. (Mar. 1, 1889, 25 Stat. 772, ch. 328, § 2; 1973 Ed., § 39-102; Nov. 19, 1985, D.C. Law 6-52, § 2(a), 32 DCR 5690.)

Section references. — This section is referred to in § 39-101.

Legislative history of Law 6-52. — Law 6-52 was introduced in Council and assigned Bill No. 6-66, which was referred to the Committee on the Judiciary. The Bill was adopted

on first and second readings on September 10, 1985, and September 24, 1985, respectively. Signed by the Mayor on September 30, 1985, it was assigned Act No. 6-75 and transmitted to both Houses of Congress for its review.

§ 39-103. Assessors to make list of persons liable to enrollment.

The Mayor of the District of Columbia shall provide for the enrollment of the militia, and for this purpose may require the assessors of taxes, at the same time they are engaged in taking the assessment of valuation of real and personal property, to make a list of persons liable to enrollment, and such record shall be deemed a sufficient notification to all persons whose names are thus recorded that they have been enrolled in the militia. Immediately after the completion of each enrollment they shall furnish the Commanding General of the militia with a copy of the same. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 3; 1973 Ed., § 39-103.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 39-104. Duty of enrolled militia; police and fire department personnel.

The enrolled militia shall not be subject to any duty except when called into the service of the United States, or to aid the civil authorities in the execution of the laws or suppression of riots. However, if the enrolled militia is called to aid the civil authorities, who already have activated, or will concomitantly activate, the police and fire departments, no member of these departments shall be subject to duty in the militia. Also, if the enrolled militia is called into service of the United States, the chief of the police department and the chief of the fire department shall be entitled to have exempted from call in the militia minimum personnel considered necessary to ensure continued, reasonable police and fire services to the citizens of the District of Columbia. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 4; 1973 Ed., § 39-104; Nov. 19, 1985, D.C. Law 6-52, § 2(b), 32 DCR 5690.)

Cross references. — As to National Guard, see Title 32, U.S. Code.

Legislative history of Law 6-52. — See note to § 39-102.

Cited in *Sandidge v. United States*, App. D.C., 520 A.2d 1057, cert. denied, 484 U.S. 868, 108 S. Ct. 193, 98 L. Ed. 2d 145 (1987).

§ 39-105. Ordering enrolled militia into service.

Whenever it shall be necessary to call out any portion of the enrolled militia the Commander-in-Chief shall order out, by draft or otherwise, or accept as volunteers as many as required. Every member of the enrolled militia who volunteers, or who is ordered out or drafted under the provisions of this chapter, who does not appear at the time and place designated, may be arrested by order of the Commanding General and be tried and punished by a court-martial. The portion of the enrolled militia ordered out or accepted shall be mustered into service for such period as may be required, and the Commanding General may assign them to existing organizations of the active militia, or may organize them as the exigencies of the occasion may require. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 5; 1973 Ed., § 39-105.)

Cross references. — As to National Guard, D.C., 520 A.2d 1057, cert. denied, 484 U.S. 868, 108 S. Ct. 193, 98 L. Ed. 2d 145 (1987), see Title 32, U.S. Code.

Cited in *Sandidge v. United States*, App.

§ 39-106. Organized militia; volunteer service; designation.

The organized militia shall be composed of volunteers, and shall be designated the National Guard of the District of Columbia. (Mar. 1, 1889, 25 Stat. 774, ch. 328, § 10; Feb. 18, 1909, 35 Stat. 629, ch. 146, § 10; 1973 Ed., § 39-106.)

Cross references. — As to National Guard, D.C., 520 A.2d 1057, cert. denied, 484 U.S. 868, 108 S. Ct. 193, 98 L. Ed. 2d 145 (1987), see Title 32, U.S. Code.

Cited in *Sandidge v. United States*, App.

§ 39-107. Reserve corps; organization; composition.

A reserve corps of the National Guard of the District of Columbia is hereby organized, to consist of honorably discharged officers and men of the Army, the Navy, the Air Force, and the Marine Corps of the United States, honorably discharged officers and men of the organized militia of any state or territory who are residents of the District of Columbia, and honorably discharged members of the National Guard of the District of Columbia, whose military training and physical condition shall conform to the standard determined by regulations to be promulgated by the President of the United States; provided, that the term of enlistment in the reserve and the military duties and obligations required of reservists shall be determined by regulations to be promulgated by the President of the United States; provided further, that when called out for military duty, reservists shall receive the same pay and allowances as officers and men of like grade on the active list of the National Guard of the District of Columbia. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 72; 1973 Ed., § 39-108.)

§ 39-108. Disbanding companies below minimum strength.

When any company of the National Guard shall, for a period of not less than 90 days, contain less than the required number of enlisted men, or upon a duly ordered inspection, shall be found to have fallen below a proper standard of efficiency, the Commanding General may, with consent of the President, either disband such company or consolidate it with any other company of the National Guard, and grant an honorable discharge to the supernumerary officers and noncommissioned officers produced by such consolidation. Officers and enlisted men discharged by reason of such disbanding or consolidation and at any time thereafter reentering the service shall have allowed to them, as part of their term of service, the time already served. (Mar. 1, 1889, 25 Stat. 774, ch. 328, § 18; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 12; June 3, 1916, 39 Stat. 200, ch. 134, § 68; 1973 Ed., § 39-111.)

§ 39-109. President to be Commander-in-Chief.

The President of the United States shall be the Commander-in-Chief of the militia of the District of Columbia. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 6; 1973 Ed., § 39-112.)

Supervision and control of National Guard of District of Columbia. — See Presidential Executive Order No. 11485, October 1, 1969, 34 F.R. 15411.

CHAPTER 2. ARMAMENT, EQUIPMENT, AND SUPPLIES.

- | | |
|--|---|
| <p>Sec.
 39-201. Issuance by Department of Army.
 39-202. Regulations for reissue of equipment by Commanding General.
 39-203. Personal liability for equipment; determination of value of lost equipment.
 39-204. Returns of equipment.
 39-205. Penalty for selling, pawning, injuring, or retaining public property.
 39-206. Transfer of property on promotion, retirement, or dismissal.
 39-207. Failure to transfer property; verification by surveying officer.
 39-208. Defective accounts; surveying officer to fix responsibility.</p> | <p>Sec.
 39-209. Surveying officer to be appointed upon death or desertion of accounting officer.
 39-210. Liability of officer or his estate until accounts are found correct.
 39-211. Liability of officer's estate for property lost, injured, or destroyed.
 39-212. Distinctive uniforms.
 39-213. Right to own personal property; actions for injuries.
 39-214. Armories to be provided.
 39-215. Annual inspections.
 39-216. Use of Fort Lesley J. McNair.
 39-217. Purchase of supplies.</p> |
|--|---|

§ 39-201. Issuance by Department of Army.

The uniforms, arms, and equipments of the National Guard shall as far as practicable be the same as prescribed and furnished to the regular Army. Every organization of the National Guard shall be provided with such ordnance and ordnance stores, clothing, camp and garrison equipage, quartermaster's stores, medical supplies, and other military stores, as may be necessary for the proper training and instruction of the force and for the proper performance of the duties required under this chapter. Such property shall be issued from the stores and supplies appropriated for the use of the Army, upon the approval and by the direction of the Secretary of the Army, to the Commanding General, upon his requisitions for the same. The property so issued shall remain and continue to be the property of the United States, and shall be accounted for by the Commanding General at such times, in manner, and on such forms as the Secretary of the Army may require. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 31; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 29; 1973 Ed., § 39-501.)

Cross references. — As to National Guard, see Title 32, U.S. Code.

References in text. — The Department of War was designated the Department of the Army and the title of Secretary of War was changed to Secretary of the Army by § 205(a) of the Act of July 26, 1947, 61 Stat. 501, ch. 343. Section 205(a) of the Act of July 26, 1947 was repealed by § 53 of the Act of August 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of the Act of

August 10, 1956 enacted §§ 3011 to 3013 of Title 10 of the United States Code, which continued the Department of the Army under the administrative supervision of a Secretary of the Army.

Cited in *Jones v. District of Columbia Armory Bd.*, 438 F.2d 138 (D.C. Cir. 1970); *Sandidge v. United States*, App. D.C., 520 A.2d 1057, cert. denied, 484 U.S. 868, 108 S. Ct. 193, 98 L. Ed. 2d 145 (1987).

§ 39-202. Regulations for reissue of equipment by Commanding General.

The Commanding General may transfer all public property, received by him for the use of the National Guard under the provisions of this chapter, to the several departmental officers of the general staff, and may make and prescribe regulations for its issue by them, and for its care and preservation by the

officers or soldiers to whom issued. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 32; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 30; 1973 Ed., § 39-502.)

§ 39-203. Personal liability for equipment; determination of value of lost equipment.

Every officer and enlisted man to whom property of the United States has been issued shall be personally responsible to the United States for such property, and no one shall be relieved from such responsibility except it be shown to the satisfaction of the Commanding General that the loss or destruction of such property was unavoidable and in no way the fault of the person responsible for the same; and in all other cases the value of the property lost or destroyed shall be charged against the person at fault or to the organization to which it has been issued, and such person or organization, if not relieved from such charge by the Commanding General, shall pay the value of such property to the Quartermaster General within one year after such loss or destruction. The value of lost or destroyed property and the person or organization to be charged therewith shall be determined by a board to consist of an inspector of the staff of the Commanding General of the militia and the commanding officer of the organization in which such property is lost. In case of disagreement such value shall be fixed by the Commanding General of the militia. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 31; 1973 Ed., § 39-503.)

Cross references. — As to disposition of funds, see § 39-706.

§ 39-204. Returns of equipment.

Every officer receiving public property for military use shall be accountable for the articles so received by him, and shall make returns of such property at such times, in such manner, and on such forms as may be prescribed. He shall be liable to trial by court-martial for neglect of duty, and also make good to the United States the value of all such property defaced, injured, destroyed or lost, by any neglect or default on his part, to be recovered in an action of tort, or by any other action at law, to be instituted by the Judge Advocate General of the militia at the order of the Commanding General. All money received on account of loss or damages shall be paid in the Treasury of the United States, and shall be accounted for by the Commanding General in his returns to the Secretary of the Army. (Mar. 1, 1889, 25 Stat. 776, ch. 328, § 33; Feb. 18, 1909, 35 Stat. 633, ch. 146, § 32; 1973 Ed., § 39-504.)

Cross references. — As to disposition of funds, see § 39-706.

References in text. — The title of Secretary of War was changed to Secretary of the Army by § 205(a) of the Act of July 26, 1947, 61 Stat. 501, ch. 343. Section 205(a) of the Act of July 26, 1947 was repealed by § 53 of the Act of

August 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of the Act of August 10, 1956 enacted §§ 3011 to 3013 of Title 10 of the United States Code, which continued the Department of the Army under the administrative supervision of a Secretary of the Army.

§ 39-205. Penalty for selling, pawning, injuring, or retaining public property.

Any officer or soldier who shall sell, dispose of, pawn or pledge, willfully destroy or injure, or retain after proper demand made, any public property issued under the provisions of this title, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not exceeding 2 months, or by a fine not exceeding \$100, or by both; and it is hereby made the duty of the judge of the Superior Court of the District of Columbia, upon information filed or complaint, made under oath, to issue process for the arrest of the offender, and to cause him to be brought before the Superior Court of the District of Columbia to be dealt with according to the provisions of this section. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 34; Feb. 18, 1909, 35 Stat. 633, ch. 146, § 33; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 39-505.)

Section references. — This section is referred to in § 39-211.

§ 39-206. Transfer of property on promotion, retirement, or dismissal.

Upon the promotion, tender of resignation, retirement, or dismissal of any officer who is responsible or accountable for public property, the Commanding General of the militia shall designate an officer to accept and receipt for such property, and direct the officer responsible or accountable therefor to make prompt transfer of all property remaining on hand; and it shall be the duty of the officer responsible or accountable to proceed at once to complete such transfer and close his accounts without delay. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 34; 1973 Ed., § 39-506.)

§ 39-207. Failure to transfer property; verification by surveying officer.

Should any officer responsible or accountable for public property, after receiving instructions to transfer the same as aforesaid, fail to make proper transfer as directed within 30 days or any authorized extension of that period, the heads of the respective staff departments exercising supervision over or control of said property shall report the facts to the Adjutant General for the action of the Commanding General of the militia. Upon receiving such a report the Commanding General may in his discretion direct that a surveying officer be appointed, and it shall be the duty of such surveying officer to ascertain and verify all public property which the delinquent officer had on hand and certify the same to the officer designated to receive it, who will immediately take up all property so certified and receipt for the same to the head of the proper staff department. The surveying officer will then proceed to determine and fix the responsibility for the loss or destruction of any of the foregoing property which

is not found or transferred as directed. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 35; 1973 Ed., § 39-507.)

§ 39-208. Defective accounts; surveying officer to fix responsibility.

Should any officer responsible or accountable for public property, after receiving instructions to transfer the same and close his accounts as aforesaid, fail to close his accounts to the satisfaction of the Commanding General, the heads of the respective staff departments exercising supervision over or control of said property will report the facts to the Adjutant General for the action of the Commanding General of the militia. Upon receiving such a report, the Commanding General may, in his discretion, direct that a surveying officer be appointed to determine and fix the responsibility for the loss or destruction of any public property for which said officer is responsible or accountable and which he has failed to transfer to the officer designated to receive the same. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 36; 1973 Ed., § 39-508.)

§ 39-209. Surveying officer to be appointed upon death or desertion of accounting officer.

In the event of the death or desertion of any officer accountable for public property the Commanding General shall direct that a surveying officer be appointed, and also designate an officer to receive such property. Said surveying officer shall ascertain and verify all public property which the deceased or deserting officer had on hand at the time of his death or desertion and certify the same to the officer designated to receive it, who will immediately take up all property so certified and receipt for the same to the heads of the proper staff departments. The surveying officer will then proceed to determine and fix the responsibility for the loss or destruction of any of the foregoing property which is not found or transferred as directed. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 37; 1973 Ed., § 39-509.)

§ 39-210. Liability of officer or his estate until accounts are found correct.

Until an officer or his legal representative shall have received notice that the property accounts of such officer have been examined and found correct the liability of such officer or of his estate for public property for which he is or may have been responsible or accountable shall be in no way affected by resignation, discharge, change in official position, desertion, or death. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 38; 1973 Ed., § 39-510.)

§ 39-211. Liability of officer's estate for property lost, injured, or destroyed.

Compensation for any public property defaced, injured, lost, or destroyed through the neglect or default of a deceased officer may be recovered from his

estate in the manner provided in § 39-205. (Feb. 18, 1909, 35 Stat. 633, ch. 146, § 38; 1973 Ed., § 39-511.)

Cross references. — As to disposition of funds, see § 39-706.

§ 39-212. Distinctive uniforms.

Any organization of the active militia may, with the approval of the Commanding General, and at its own expense, adopt any other uniform than that issued to it; but such uniform shall not be worn when such organization is on duty under the orders of the Commanding General except by his permission. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 37; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 40; 1973 Ed., § 39-512.)

§ 39-213. Right to own personal property; actions for injuries.

Organizations of the National Guard shall have the right to own and keep personal property, which shall belong to and be under the control of the active members thereof; and the commanding officer of any organization may recover for its use any debts or effects belonging to it, or damages for injury to such property; action for such recovery to be brought in the name of such commanding officer, before the court in the District of Columbia having jurisdiction of the amount in controversy, and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but, upon the motion of the commander succeeding him, such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 38; Feb. 17, 1909, 35 Stat. 623, ch. 134; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 41; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 575, Pub. L. 91-358, title I, § 157(i); 1973 Ed., § 39-513.)

Cross references. — As to jurisdiction, see §§ 11-501 and 11-921.

§ 39-214. Armories to be provided.

The Quartermaster General of the militia shall provide, by rental or otherwise, such armories for the National Guard as may be allowed and directed by the Commanding General. He shall also provide each organization with such lockers, closets, gun racks, and cases or desks as may be necessary for the care, preservation, and safekeeping of the arms, equipments, uniforms, records, and other militia property in their possession. He shall also provide suitable rooms for the offices of the Commanding General and staff, for the keeping of books, the transaction of business, and the instruction of officers, and also suitable places for the storage and safekeeping of public property.

(Mar. 1, 1889, 25 Stat. 777, ch. 328, § 39; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 42; 1973 Ed., § 39-514.)

Decision of Armory Board refusing to rent Armory to organization did not deny free speech and assembly or equal protection of

the law. *Jones v. District of Columbia Armory Bd.*, 438 F.2d 138 (D.C. Cir. 1970).

§ 39-215. Annual inspections.

An annual inspection and muster of each organization of the National Guard, and an inspection of their armories and of public property in their possession, shall be made at such times and places as the Commanding General may order and direct. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 42; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 45; 1973 Ed., § 39-515.)

§ 39-216. Use of Fort Lesley J. McNair.

National Guard shall have the use of the drill grounds and rifle range at Fort Lesley J. McNair, subject to the approval of the Secretary of the Army, and the Commanding General of the militia shall provide such additional targets and accessories as may be necessary for the use of the militia. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 44; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 47; 1973 Ed., § 39-516.)

References in text. — The Washington Barracks was redesignated Army War College in 1927. In 1935, it was named Fort Humphreys. It was again named Army War College in 1939. In 1948, it was named Fort Lesley J. McNair.

The title of Secretary of War was changed to Secretary of the Army by § 205(a) of the Act of

July 26, 1947, 61 Stat. 501, ch. 343. Section 205(a) of the Act of July 26, 1947 was repealed by § 53 of the Act of August 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of the Act of August 10, 1956 enacted §§ 3011 to 3013 of Title 10 of the United States Code, which continued the Department of the Army under the administrative supervision of a Secretary of the Army.

§ 39-217. Purchase of supplies.

The purchase of supplies and the procurement of services for all branches of the District of Columbia militia service may be made in open market, in the manner common among businessmen, when the aggregate of the amount required does not exceed \$100. (May 26, 1908, 35 Stat. 308, ch. 198, § 1; 1973 Ed., § 39-517.)

Cross references. — As to expenses and allowances, see § 39-702 et seq.

CHAPTER 3. COMMISSIONED OFFICERS.

Sec.	Sec.
39-301. Commanding General.	39-308. Appointments to grade of 2nd lieutenant.
39-302. Staff officers; noncommissioned staff.	39-309. Examinations for promotion; failure to appear; retirement for disability.
39-303. Qualifications of staff officers; tenure; vacancies.	39-310. Examinations for 2nd lieutenants.
39-304. Adjutant General.	39-311. Special examination of officer's capability.
39-305. Officers.	39-312. Retirement of commissioned officer.
39-306. Officers of staff departments.	39-313. Discharge of commissioned officer.
39-307. Filling vacancies above the grade of 2nd lieutenant.	

§ 39-301. Commanding General.

(a) There shall be appointed and commissioned by the President of the United States a Commanding General of the militia of the District of Columbia with the rank of brigadier general, or major general, who shall hold office until his successor is appointed and qualified, but may be removed at any time by the President.

(b) Except as provided in subsection (c) of this section, any person serving as the Commanding General of the militia of the District of Columbia shall be considered to be an employee of the Department of Defense, and of the United States, within the meaning of § 2105 of Title 5, United States Code.

(c) Any officer of the armed forces of the United States who, while serving on active duty, is detailed to serve as Commanding General of the militia of the District of Columbia shall, while so detailed, be entitled to receive only the pay and allowances to which he is entitled as an officer of the armed forces. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 7; Sept. 2, 1957, 71 Stat. 596, Pub. L. 85-270, § 1; June 30, 1970, 84 Stat. 366, Pub. L. 91-297, title V, § 501(a); 1973 Ed., § 39-201.)

Cross references. — As to President as Commander-in-Chief, see § 39-109. As to power to make rules and regulations, see § 39-905.

§ 39-302. Staff officers; noncommissioned staff.

The staff of the militia of the District of Columbia shall be appointed and commissioned by the President. It shall consist of one Adjutant General, one Inspector General, one Quartermaster General, one Commissary General, one Chief of Ordnance, one Chief Engineer, one Surgeon General, one Judge Advocate General, and one Inspector General of Rifle Practice each with the rank of major; and 4 aides-de-camp, each with the rank of captain. The Commanding General may appoint a noncommissioned staff of the militia, to consist of one sergeant major, one quartermaster sergeant, one commissary sergeant, one ordnance sergeant, 2 staff sergeants, one hospital steward, one color sergeant, and one sergeant bugler. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 8; June 3, 1916, 39 Stat. 199, ch. 134, § 66; 1973 Ed., § 39-202.)

Cross references. — As to noncommissioned officers, see § 39-401. As to duties of officers, see § 39-901. As to date of commissions, see § 39-902.

§ 39-303. Qualifications of staff officers; tenure; vacancies.

It is hereby provided that staff officers, including officers of the pay, inspection, subsistence, and medical departments, appointed in the National Guard of the District of Columbia, shall have had previous military experience and shall hold their positions until they shall have reached the age of 64 years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for that purpose, and that vacancies among said officers shall be filled by appointment from the officers of the National Guard of the District of Columbia. (July 11, 1919, 41 Stat. 127, ch. 8; 1973 Ed., § 39-203.)

§ 39-304. Adjutant General.

The President may assign an officer of the Army to act as Adjutant General of the militia of the District of Columbia, who, while so assigned, shall be commissioned as such and be subject to the orders of the Commanding General and the provisions of this title; provided, however, that the officer so assigned shall receive no other pay or emolument than that to which his rank in the Army entitles him when on detached service. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 9; 1973 Ed., § 39-204.)

Cross references. — As to National Guard, see Title 32, U.S. Code.

§ 39-305. Officers.

All officers shall be commissioned by the President of the United States, on the recommendation of the Commanding General. They shall be nominated as herein provided. No person commissioned as an officer shall assume such rank or enter upon the duties of the office to which he may be commissioned until he has accepted such commission and taken such oath or affirmation as may be prescribed. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 19; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 13; 1973 Ed., § 39-206.)

Cross references. — As to National Guard, see Title 32, U.S. Code.

§ 39-306. Officers of staff departments.

The officers of the staff departments, staff corps, and the organizations created by this chapter when organized, shall be nominated by the Commanding General, subject to the examination required by law. (Mar. 1, 1889, 25 Stat. 775, ch. 328, §§ 20, 21; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 14; 1973 Ed., § 39-207.)

§ 39-307. Filling vacancies above the grade of 2nd lieutenant.

Vacancies occurring in the cavalry, coast artillery corps, field artillery, and infantry above the grade of second lieutenant shall, subject to the examination required by law, be filled by promotion according to seniority from the next lower grade in the troop, the separate company, the field battery, the separate battalion, and the regiment in which the vacancy occurs. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 22; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 15; 1973 Ed., § 39-208.)

§ 39-308. Appointments to grade of 2nd lieutenant.

All appointments to the grade of second lieutenant shall be from the enlisted men, under regulations prescribed by the Commanding General, and subject to the examination required by law. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 16; 1973 Ed., § 39-209.)

§ 39-309. Examinations for promotion; failure to appear; retirement for disability.

The Commanding General is authorized to prescribe a system of examination to be conducted at such times anterior to the accruing of the right to promotion as may be best for the interest of the service. If any officer fails to appear for examination within 30 days after notification to so appear or fails to pass a satisfactory examination and is reported unfit for promotion, the officer next below him in rank, having passed said examination, shall receive the promotion: And provided, that should the officer fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in the line of duty he shall be retired with the rank to which his seniority entitled him to be promoted; but if he should fail for any other reason he shall be suspended from promotion for 90 days, when he shall be reexamined, and in case of failure on such reexamination he shall be honorably discharged. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 23; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 17; 1973 Ed., § 39-210.)

§ 39-310. Examinations for 2nd lieutenants.

The Commanding General is authorized to prescribe a system of examination of enlisted men to determine their fitness for promotion to the grade of second lieutenant. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 18; 1973 Ed., § 39-211.)

§ 39-311. Special examination of officer's capability.

(a) Whenever, in the opinion of the Commanding General of the militia of the District of Columbia, an officer of the said militia has become incapacitated for the performance of duty for any reason, the Commanding General shall

submit the name of such officer to the Secretary of the Army, with a view to his being ordered before a board of examination, to be appointed by the Secretary of the Army, which board shall examine said officer as to his physical, mental, and military qualifications.

(b) If any officer shall fail to appear before a board of examination so appointed within 30 days after being notified, or shall fail to pass a satisfactory examination, the fact shall be certified by the board to the Commanding General, who shall forward the record of examination to the Secretary of the Army, with his recommendation thereon, for submission to the President. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 631, ch. 146, § 19; 1973 Ed., § 39-212.)

References in text. — The title of Secretary of War was changed to Secretary of the Army by § 205(a) of the Act of July 26, 1947, 61 Stat. 501, ch. 343. Section 205(a) of the Act of July 26, 1947 was repealed by § 53 of the Act of August 10, 1956, 70A Stat. 641, ch. 1041. Section 1 of the Act of August 10, 1956, enacted §§ 3011 to 3013 of Title 10 of the United States

Code, which continued the Department of the Army under the administrative supervision of a Secretary of the Army.

Withdrawal of federal recognition to an officer of the National Guard does not terminate his status as a state officer. *Hurley v. United States ex rel. Gladman*, 47 F.2d 431 (D.C. Cir. 1931).

§ 39-312. Retirement of commissioned officer.

Any commissioned officer in the National Guard of the District of Columbia who shall have served as such in the National Guard of the District of Columbia for the continuous period of 10 years may, upon his own application, be placed by the President of the United States upon a retired list, which is hereby authorized, with the rank held by him at the time such application is made; provided, however, that an officer so retired, who at the time of making such application has remained in the same grade for the continuous period of 10 years, or whose services have been especially meritorious, may be retired with increased rank of 1 grade and shall, before being so retired, receive from the President of the United States the commission of the new grade; provided further, that whenever any officer on the active list reaches the age of 64 years he shall be retired; with or without increase of rank in the discretion of the President of the United States. Retired officers on occasions of ceremony may, and when acting under orders, as hereinafter provided, shall wear the uniform of the highest rank attained by them in the military service of the United States, the militia of the states or territories, or the National Guard of the District of Columbia. Retired officers shall be eligible to perform any military duty to the same extent as if not retired, and the Commanding General may, in his discretion, by order, require them to serve upon military boards, courts of inquiry, and courts-martial, or to perform any other special or temporary duty, and for such service they shall receive the same pay and allowances as are provided by law for like service by officers on the active list of the National Guard of the District of Columbia. All retired officers shall be amenable to court-martial for military offenses to the same extent as if upon the active list of the National Guard of the District of Columbia. The names of all officers of retired rank shall be borne upon a separate roster, kept under the supervision of the Adjutant General. The Commanding General may at any time recom-

ment to the President of the United States and the President may retire any commissioned officer who shall have been ordered before a medical board consisting of at least 3 commissioned medical officers and upon whom such a board shall have made report showing such officer to be physically unable to properly perform the duties of his office. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 631, ch. 146, § 20; 1973 Ed., § 39-213.)

Cross references. — As to National Guard, see Title 32, U.S. Code.

§ 39-313. Discharge of commissioned officer.

- (a) A commissioned officer may be honorably discharged:
 - (1) Upon tender of resignation;
 - (2) Upon disbandment of the organization to which he belongs; or
 - (3) Upon report of a board of examination, or for failure to appear before such board when ordered.
- (b) He may be dismissed upon the sentence of a court-martial, or conviction in a court of justice of an infamous offense. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 24; Feb. 18, 1909, 35 Stat. 631, ch. 146, § 21; 1973 Ed., § 39-214.)

CHAPTER 4. NONCOMMISSIONED OFFICERS.

Sec.

39-401. Appointment; reduction to ranks.

§ 39-401. Appointment; reduction to ranks.

The commanding officers of regiments and battalions not part of regiments shall appoint and warrant the noncommissioned staff officers of their respective regiments or battalions, and they shall, in their discretion, warrant the noncommissioned officers of the companies of their respective regiments and battalions from the members thereof, upon the written nomination of the commanding officers of the companies, respectively. In troop, battery, and companies not part of a regiment or battalion and in the hospital corps the noncommissioned officers shall be warranted by the commanding officer of the brigade, in his discretion, from the members thereof, upon the written nomination of the commanding officer of the troop, battery, company, or hospital corps. The officer warranting a noncommissioned officer shall have power to reduce to the ranks, for good and sufficient reasons, the noncommissioned officers named in this section, but such as were enlisted as noncommissioned officers shall be discharged. Noncommissioned officers who shall be dropped vacate their positions. (Mar. 1, 1889, 25 Stat. 775, ch. 328, § 25; Feb. 18, 1909, 35 Stat. 631, ch. 146, § 22; 1973 Ed., § 39-301.)

Cross references. — As to noncommissioned staff of militia, see § 39-302.

As to duties of officers, see § 39-901.

CHAPTER 5. ENLISTED PERSONNEL.

Sec.

39-501. Discharge without honor.

39-502. Dishonorable discharge.

§ 39-501. Discharge without honor.

An enlisted man may be discharged without honor at any time by order of the Commanding General on account of fraudulent enlistment, or on account of his being continuously absent without leave from his command for a period of not less than 3 months. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 26; 1973 Ed., § 39-404.)

§ 39-502. Dishonorable discharge.

An enlisted man shall be dishonorably discharged by order of the Commanding General upon conviction of felony in a civil court; upon discovery of reenlistment after previous dishonorable discharge; or to carry out a sentence of a court-martial. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 27; 1973 Ed., § 39-405.)

CHAPTER 6. ACTIVE MILITARY DUTY.

Sec.
 39-601. Drill, parade, encampment or required duty.
 39-602. Prescribing drills.
 39-603. Suppression of riots.
 39-604. Excuse for physical disability; penalty for absence.

Sec.
 39-605. Parades to have right-of-way.
 39-606. Rules for parades and encampments.
 39-607. Camp duty.

§ 39-601. Drill, parade, encampment or required duty.

Any drill, parade, encampment or duty that is required, ordered, or authorized to be performed under the provisions of this title, shall be deemed to be a military duty, and while on such duty every officer and enlisted man of the National Guard shall be subject to the lawful orders of his superior officers, and for any military offense may be put and kept under arrest or under guard for a time not extending beyond the term of service for which he is then ordered. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 40; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 43; 1973 Ed., § 39-601.)

Cross references. — As to right-of-way, see § 39-605.
 As to rules of parade or encampment, see § 39-606.
 As to system of discipline and field exercises, see § 39-904.

Supervision and control of National Guard of District of Columbia. — See Presidential Executive Order No. 11485, October 1, 1969, 34 F.R. 15411.

§ 39-602. Prescribing drills.

The Commanding General shall prescribe such stated drills and parades as he may deem necessary for the instruction of the National Guard, and may order out any portion of the National Guard for such drills, inspections, parades, escort, or other duties, as he may deem proper. The commanding officer of any regiment, battalion or company may also assemble his command, or any part thereof, in the evening for drill, instruction, or other business, as he may deem expedient; but no parade shall be performed by any regiment, battalion, company, or part thereof, without the permission of the Commanding General. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 41; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 44; 1973 Ed., § 39-602.)

§ 39-603. Suppression of riots.

When there is in the District of Columbia a tumult, riot, mob, or a body of men acting together by force with attempt to commit a felony or to offer violence to persons or property, or by force or violence to break and resist the laws, or when such tumult, riot, or mob is threatened, it shall be lawful for the Mayor of the District of Columbia, or for the United States Marshal for the District of Columbia, or for the National Capital Service Director, to call on the Commander-in-Chief to aid them in suppressing such violence and enforcing the laws; the Commander-in-Chief shall thereupon order out so much and such portion of the militia as he may deem necessary to suppress the same, and no

member thereof who shall be thus ordered out by proper authority for any such duty shall be liable to civil or criminal prosecution for any act done in the discharge of his military duty. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 45; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 48; 1973 Ed., § 39-603; Dec. 24, 1973, 87 Stat. 826, Pub. L. 93-198, title VII, § 739(d).)

Cross references. — As to National Guard, see Title 32, U.S. Code.

As to enrolled militia subject to call, see § 39-104.

Severability of Public Law 93-198. — As to severability of Public Law 93-198, the District of Columbia Self-Government and Governmental Reorganization Act, see § 762 of the act, set forth in Volume 1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 39-604. Excuse for physical disability; penalty for absence.

No officer or soldier of the National Guard, when ordered on duty to aid the civil authorities, or when ordered into the service of the United States in obedience to the call or order of the President, shall be excused from such duty except upon the certificate of the surgeon of his command of physical disability, such certificate to be presented to the Commanding General in case of an officer, or to his company commander in case of a soldier. If such officer or soldier fail to furnish such excuse he shall be tried and punished by a court-martial. For absence from any other military duty required or ordered under the provisions of this chapter the penalty shall be such as may be prescribed by the Commanding General, or the bylaws of the organization to which the officer or soldier belongs. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 46; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 49; 1973 Ed., § 39-604.)

Cross references. — As to National Guard, see Title 32, U.S. Code.

§ 39-605. Parades to have right-of-way.

The United States forces or troops, or any portion of the militia, parading, or performing any duty according to law, shall have the right-of-way in any street or highway through which they may pass; provided, that the carriage of the United States mails, the legitimate functions of the police, and the progress and operations of fire engines and fire departments shall not be interfered with thereby. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 47; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 50; 1973 Ed., § 39-605.)

§ 39-606. Rules for parades and encampments.

Every commanding officer, when on duty, may ascertain and fix necessary bounds and limits to his parade or encampment. Whoever intrudes within the limits of the parade or encampment after being forbidden, or whoever shall interrupt, molest, or obstruct any officer or soldier while on duty, may be put and kept under guard until the parade, encampment, or duty be concluded; and the commanding officer may turn over such person to any police officer, and said police officer is required to detain him in custody for examination or trial before the Superior Court of the District of Columbia, and the judge thereof may punish such offense by a fine not exceeding \$25. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 48; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 51; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 39-606.)

§ 39-607. Camp duty.

The National Guard shall perform not less than 6 consecutive days of camp duty in each year, at such time as may be ordered by the Commanding General, and the Quartermaster General of the militia, subject to the approval of the Commanding General, shall provide, by rental or otherwise, a suitable camp-ground for the annual encampment of the militia, make the necessary provisions thereon for the encampment, and provide necessary transportation to and from the same for baggage and supplies. (Mar. 1, 1889, 25 Stat. 778, ch. 328, § 43; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 46; 1973 Ed., § 39-607.)

CHAPTER 7. PAY AND ALLOWANCES.

Sec.

39-701. Active service.

39-702. General expenses.

39-703. Musicians.

39-704. Subsistence stores.

Sec.

39-705. Annual estimates.

39-706. Deductions for lost property; officers' clothing; use of fines and appropriations.

§ 39-701. Active service.

Whenever the National Guard of the District of Columbia shall be ordered to duty in case of riot, tumult, breach of the peace, or whenever called in aid of the civil authorities, all enlisted men who do duty shall be paid at the rate equivalent to 2 times the pay of enlisted men of the regular Army of like grade. Commissioned officers who do duty shall be entitled to and shall receive the same pay and allowances as commissioned officers of like grade of the regular Army. Each mounted officer and enlisted man shall be paid a reasonable per diem compensation for each horse actually furnished and used by him; provided, that when the National Guard of the District of Columbia is called into actual service of the United States the officers and enlisted men shall, during their time of service, be entitled to the same pay and allowances as are or may be provided by law for the regular Army. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 53; 1973 Ed., § 39-801.)

Cross references. — As to National Guard, see Title 32, U.S. Code.

§ 39-702. General expenses.

There shall be allowed for the general expenses of the militia such sums as may be necessary for the rental and furnishing of offices for headquarters, stationery, postage, printing and issuing orders, advertising orders, providing necessary blanks for the use of the militia, the cost of storing, caring for, and issuing all public property, and such other contingent expenses, not herein specially provided for, as may be estimated and appropriated for; the accounts for which shall be certified to by the officer receiving the service or property charged for, approved by the Commanding General, and paid in the manner provided in § 39-901. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 55; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 63; 1973 Ed., § 39-802.)

Cross references. — As to method of purchase of services or supplies, see § 39-217.

§ 39-703. Musicians.

(a) During the annual encampment, and on every duty on parade ordered by the Commanding General, there shall be allowed and paid for each day of service:

- (1) To each member of the regularly enlisted bands, \$4;
- (2) To the chief musicians, \$8; and
- (3) To the principal musicians, \$6.

(b) In the event there is no enlisted band or field music, or not a sufficient number of either, the Commanding General may authorize the employment of such as he may deem necessary for the occasion; provided, that the total pay of the enlisted musicians shall not in any event exceed the rates authorized by this section. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 56; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 64; 1973 Ed., § 39-803.)

§ 39-704. Subsistence stores.

During the annual encampment, or when ordered on duty to aid the civil authorities, the National Guard shall be furnished with subsistence stores, of the kind, quality, and amount allowed and prescribed by the Army. Such stores shall be issued from the stores and supplies appropriated for the use of the Army, upon the approval and by the direction of the Secretary of the Army, to the Commanding General upon his requisitions for the same. (Mar. 1, 1889, 25 Stat. 790, ch. 328, § 57; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 65; 1973 Ed., § 39-804.)

References in text. — The title of Secretary of War was changed to Secretary of the Army by § 205(a) of the Act of July 26, 1947, 61 Stat. 501, ch. 343. Section 205(a) of the Act of July 26, 1947 was repealed by § 53 of the Act of August 10, 1956, 70A Stat. 641, ch. 1041. Sec-

tion 1 of the Act of August 10, 1956 enacted §§ 3011 to 3013 of Title 10 of the United States Code, which continued the Department of the Army under the administrative supervision of a Secretary of the Army.

§ 39-705. Annual estimates.

The Commanding General shall annually transmit to the Mayor of the District of Columbia an estimate of the amount of money required for the next ensuing fiscal year to pay the expenses authorized by this title, and the said Mayor shall include the same in his annual estimates of appropriations for the District; and all moneys appropriated to pay the expenses authorized by this title shall be disbursed in accordance with law. (Feb. 18, 1909, 35 Stat. 636, ch. 146, § 66; 1973 Ed., § 39-805.)

Cross references. — As to method of purchase of services or supplies, see § 39-217.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 39-706. Deductions for lost property; officers' clothing; use of fines and appropriations.

All moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia, on account of government property lost or destroyed by such individual shall be repaid into the United States Treasury to the credit of the officer of the militia of the District of Columbia who is accountable to the United States government for such property lost or destroyed; provided, that there may be paid to all commissioned officers (without discrimination, and in lieu of the limited pay authorized by this section) an allowance to be used by them in the purchase and maintenance of clothing and equipment; provided further, that after March 2, 1911, all moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia for or on account of any violation of the regulations governing said National Guard, and all moneys which, by reason of the absence of officers or enlisted men from duly ordered assemblies or other duty, are not expended for pay of troops, shall be held by the Commanding General of the militia of the District of Columbia, who is authorized to expend such moneys for necessary clerical and general expenses of the service, heretofore or hereafter incurred, including law books and books of reference, or for the pay of troops, other than government employees; and for all moneys so expended the Commanding General shall make an accounting in like manner as for the appropriation disbursed for pay of troops; provided further, that after March 2, 1911, any of the moneys appropriated for the District of Columbia Militia may be used to supplement specific appropriations or allotments which may be found insufficient for the purposes for which made, and authority is hereby given to supplement the regular ration by purchase of such additional articles of subsistence as may be deemed necessary; provided further, that after March 2, 1911, the Commanding General of the District of Columbia Militia is hereby authorized to make such deductions from any pay of any officer or enlisted man derived from appropriations or allotments made under the provisions of § 1661, United States Revised Statutes or other federal enactments as may be necessary to reimburse the United States or the District of Columbia for public property lost, destroyed, or damaged by such individual. (Mar. 2, 1911, 36 Stat. 1004, ch. 192; 1973 Ed., § 39-806.)

Cross references. — As to disposition of funds, see § 39-204.

References in text. — Section 1661, United

States Revised Statutes, referred to near the end of the section, was repealed by the Act of March 3, 1933, 47 Stat. 1428, ch. 202, § 1.

CHAPTER 8. COURTS-MARTIAL.

Sec.	Sec.
39-801. Designation of military courts.	39-806. Jurisdiction to be presumed.
39-802. Courts of inquiry.	39-807. Witnesses; compulsory attendance.
39-803. General courts-martial.	39-808. Execution of sentences.
39-804. Constitution; jurisdiction; procedure.	39-809. Warrants for arrest of accused.
39-805. Prosecution of members prohibited.	

§ 39-801. Designation of military courts.

The military courts of the District of Columbia shall be: General courts-martial, special courts-martial, the summary courts-martial, and courts of inquiry, as now or hereafter provided by law. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 50; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 54; 1973 Ed., § 39-701.)

§ 39-802. Courts of inquiry.

Courts of inquiry, to consist of not more than 3 officers, may be ordered by the Commanding General for the purpose of investigating the conduct of any officer, either at his own request or on complaint or charge of conduct unbecoming an officer. Such court of inquiry shall report the evidence adduced, a statement of facts, and an opinion thereon, when required, to the Commanding General, who may, in his discretion, thereupon order a court-martial for the trial of the officer whose conduct has been inquired into. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 50; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 55; 1973 Ed., § 39-702.)

§ 39-803. General courts-martial.

General courts-martial for the trial of commissioned officers or enlisted men shall be ordered by the President of the United States or Commanding General at such times as the interests of the service may require. (Mar. 1, 1889, 25 Stat. 779, ch. 328, § 51; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 56; 1973 Ed., § 39-703.)

Cross references. — As to general courts-martial of National Guard not in federal service, see 32 U.S.C. § 327.

§ 39-804. Constitution; jurisdiction; procedure.

The constitution and jurisdiction of military courts, the form and manner in which their proceedings shall be conducted and reported, and the forms of oaths and affirmations taken in the administration of military law by such courts, the limits of punishment and the proceedings in revision shall be governed by the Articles of War and the law and procedure of the military courts of the United States. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 57; 1973 Ed., § 39-704.)

Cross references. — As to failure of members of enrolled militia to appear when ordered, see § 39-105.

As to failure to return, or destruction of, government property, see § 39-204.

As to failure of member of National Guard to report for duty when ordered into service, see § 39-604.

References in text. — Articles of War, referred to near the end of this section, refer to those codified in United States Revised Statutes, § 1342, Articles 1 to 128, which were repealed by the Act of June 4, 1920, 41 Stat. 812, ch. 227, § 4, and are now covered by the Uniform Code of Military Justice, § 1 of the Act of August 10, 1956, 70A Stat. 36.

§ 39-805. Prosecution of members prohibited.

No action or proceeding shall be prosecuted or maintained against a member of a military court, or officer or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence, or the imposition or collection of fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of the military court, nor shall any officer or enlisted man be liable to civil or criminal prosecution for any act done while in the discharge of his military duty. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 58; 1973 Ed., § 39-705.)

§ 39-806. Jurisdiction to be presumed.

The jurisdiction of the courts and boards established by this title shall be presumed, and the burden of proof shall rest on any person to oust such courts or boards of jurisdiction in any action or proceedings. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 59; 1973 Ed., § 39-706.)

§ 39-807. Witnesses; compulsory attendance.

Every person not belonging to the National Guard of the District of Columbia who, being duly subpoenaed to appear as a witness before the military courts herein provided for, willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be guilty of a misdemeanor, for which such person shall be punished on information in the criminal courts of the District of Columbia, and it shall be the duty of the United States Attorney for the District of Columbia, on certification of the facts to him by any military court herein provided for, to file an information against and prosecute the person so offending and the punishment of such person on conviction shall be by a fine of not more than \$100, or imprisonment not exceeding 30 days, or both, at the discretion of the court; provided, that this section shall not apply to persons residing beyond the limits of the District of Columbia, and that the fees of such witness and his mileage at the rate provided for witnesses in the United States District Court in said District shall be duly paid or tendered said witness; and provided, that no witness shall be compelled to incriminate himself or to answer any questions which may tend to criminate or degrade him. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 60; 1973 Ed., § 39-707.)

§ 39-808. Execution of sentences.

The sentences of said courts, whether of fine or imprisonment, shall be executed by the United States Marshal for the District of Columbia in the same manner as are sentences of the criminal courts of said District. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 61; 1973 Ed., § 39-708.)

§ 39-809. Warrants for arrest of accused.

Whenever it shall appear to a regularly constituted court-martial convened under the provisions of this chapter that the accused, having been duly ordered or summoned to appear before such court-martial for trial, has refused or neglected so to appear, such court-martial shall issue a warrant or attachment for the arrest of the accused, directed to the United States Marshal for the District of Columbia, who shall forthwith execute said warrant or attachment, make proper return thereof to such court-martial, and produce to such court-martial the body of the accused, if within the District of Columbia, and to retain the custody thereof and continue so to produce said body during the sessions of such court-martial until the conclusion of the trial, unless sooner discharged by said court-martial. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 62; 1973 Ed., § 39-709.)

CHAPTER 9. MISCELLANEOUS PROVISIONS.

Sec.	Sec.
39-901. Duties of officers.	39-904. System of discipline and field exercise.
39-902. Date of commissions.	39-905. Commanding General authorized to make regulations.
39-903. Companies, battalions, or regiments authorized to make rules.	39-906. Naval battalion not affected.

§ 39-901. Duties of officers.

The departmental and military duties of the officers provided for in this title shall be correlative with those discharged by similarly designated officers in the Army of the United States. (Mar. 1, 1889, 25 Stat. 781, ch. 328, § 60; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 68; 1973 Ed., § 39-901.)

Section references. — This section is referred to in § 39-702.

§ 39-902. Date of commissions.

Any commission issuing under the provisions of this title shall, where the rank remains unchanged, bear the date of the commission held on Feb. 18, 1909; and any officer who has served continuously in the same grade may be recommissioned with rank from date of his original commission to that grade. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 76; 1973 Ed., § 39-902.)

§ 39-903. Companies, battalions, or regiments authorized to make rules.

Companies, battalions, or regiments may adopt constitutional articles of agreement or bylaws subject to the approval of the Commander-in-Chief, for the government of matters relating to the civic affairs of their respective organizations, the regulation of fines for nonperformance of duty, and the determination of causes upon which excuses from fines may be based; provided, however, that such articles or rules shall not be repugnant to law or the regulations for the government of the militia; and provided further, that the articles or rules adopted by any company or battalion shall not be repugnant to the articles or rules adopted for the general government of the regiment or battalion to which it belongs. Certified copies of such articles or rules, with like copies of all alterations, as finally approved by the Commanding General, shall be deposited in the office of the Adjutant General. (Mar. 1, 1889, 25 Stat. 780, ch. 328, § 59; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 67; 1973 Ed., § 39-903.)

§ 39-904. System of discipline and field exercise.

The system of discipline and field exercise ordered to be observed by the Army of the United States, or such other system as may be directed for the militia by laws of the United States, shall be observed by the National Guard.

(Mar. 1, 1889, 25 Stat. 781, ch. 328, § 61; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 69; 1973 Ed., § 39-904.)

§ 39-905. Commanding General authorized to make regulations.

The Commanding General, subject to the approval of the Commander-in-Chief, is authorized to make and publish regulations for the government of the militia in all matters not specifically provided for by law, conforming the same to the practice and regulations of the Army so far as they may be applicable. (Mar. 1, 1889, 25 Stat. 781, ch. 328, § 62; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 70; 1973 Ed., § 39-905.)

Cross references. — As to National Guard, see Title 32, U.S. Code.

§ 39-906. Naval battalion not affected.

Nothing contained in this title shall be held to alter the status or organization of the naval battalion as now provided for by law. (Mar. 1, 1889, ch. 328; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 75; 1973 Ed., § 39-906.)

TITLE 40. MOTOR VEHICLES AND TRAFFIC.

Chapter

- 1. Registration of Motor Vehicles..... §§ 40-101 to 40-126.
- 2. Inspection..... §§ 40-201 to 40-208.
- 3. Operators’ Permits..... §§ 40-301 to 40-303.
- 4. Motor Vehicle Safety Responsibility..... §§ 40-401 to 40-499.1.
- 5. Motor Vehicle Operators; Implied Consent to
Blood-Alcohol Content Tests..... §§ 40-501 to 40-507.
- 6. Traffic Adjudication..... §§ 40-601 to 40-642.
- 7. Regulation of Traffic..... §§ 40-701 to 40-753.
- 8. Regulation of Parking..... §§ 40-801 to 40-821.
- 8A. Abandoned and Junk Vehicle Removal..... §§ 40-831 to 40-836.
- 8B. Public Parking Authority..... §§ 40-841 to 40-854.
- 9. Public-Owned Vehicles..... §§ 40-901 to 40-902.
- 10. Liens on Motor Vehicles or Trailers..... §§ 40-1001 to 40-1017.
- 11. Installment Sales of Motor Vehicles..... §§ 40-1101 to 40-1110.
- 12. Child Restraint..... §§ 40-1201 to 40-1208.
- 13. Automobile Consumer Protection..... §§ 40-1301 to 40-1310.
- 14. Regulation of Bicycles..... §§ 40-1401 to 40-1414.
- 15. Driver License Compact..... §§ 40-1501 to 40-1502.
- 16. Mandatory Use of Seat Belts..... §§ 40-1601 to 40-1607.
- 17. Regulation of Taxicabs..... §§ 40-1701 to 40-1722.
- 18. Uniform Classification and Commercial
Driver’s License..... §§ 40-1801 to 40-1809.
- 19. Food Delivery Insurance Requirements..... §§ 40-1901 to 40-1905.
- 20. Alternative Fuels Technology..... §§ 40-2001 to 40-2014.

CHAPTER 1. REGISTRATION OF MOTOR VEHICLES.

<i>Subchapter I. General Provisions.</i>		Sec.
Sec.		40-113. Registration.
40-101. Definitions.		40-114. Mayor to make rules and regulations.
40-102. Motor vehicles and trailers; expiration; certificates and tags; sale or trans- fer; Mayor to issue rules.	<i>Subchapter III. International Registration Plan Agreements.</i>	
40-103. Motor vehicles of Disabled American Veterans.	40-121. Definitions.	
40-104. Fees classified and use of proceeds designated.	40-122. Reciprocal agreements.	
40-105. Unlawful acts; penalty.	40-123. Registration.	
40-106. Provisions not affected.	40-124. Interjurisdictional and intrajurisdic- tional privileges.	
<i>Subchapter II. Rental Vehicle Tax.</i>	40-125. Auditing.	
40-111. Definitions.	40-126. Fees.	
40-112. Interstate and intrastate privileges.	40-127. Rules.	

*Subchapter I. General Provisions.***§ 40-101. Definitions.**

As used in §§ 40-101, 40-102 and 40-104 to 40-106:

(1) The term “motor vehicle” means any vehicle propelled by an internal combustion engine, electricity, or steam. The term “motor vehicle” shall not include road rollers, farm tractors, vehicles propelled only upon stationary rails or tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.

(2) The term “person” means an individual, partnership, corporation, or association.

(3) The term “owner” means a person who holds the legal title to a motor vehicle or trailer the registration of which is required in the District of Columbia. If a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of these regulations.

(4) The term “Director” means the Director of the Department of Transportation of the District of Columbia, including assistants or agents duly designated by the Mayor.

(5) The term “dealer” means any person engaged in the business of manufacturing, distributing, or dealing in motor vehicles or trailers.

(6) The term “public highway” means any road, street, alley, or way, open to use of the public, as a matter of right, for purposes of vehicular traffic.

(7) The term “trailer” means a vehicle without motor power intended or used for carrying property or persons and drawn or intended to be drawn by a motor vehicle, whether such vehicle without motor power carries the weight of the property or persons wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle.

(8) The term “farm tractor” means a motor vehicle designed and used primarily for drawing implements of agricultural husbandry.

(9) The term “pneumatic tire” means a tire inflated with compressed air.

(10) The terms “operate” and “operated” shall include operating, moving, standing, or parking any motor vehicle or trailer on a public highway of the District of Columbia.

(11) The term “historic motor vehicle” means any motor vehicle whose manufacturer’s model year is at least 25 years old or any motor which is at least 15 years old and is a make of motor vehicle no longer manufactured; provided, that the motor vehicle has been or is being restored, preserved or maintained as an exhibition or collector’s item because of its special historical value or significance, has not been substantially altered or modified from the manufacturer’s original specifications and is used on the public highways for the transportation of passengers or property in conjunction with exhibitions, expositions, parades, tours, club activities, or similar activities or events,

including transportation directly to or from such activities or events, but in no event used for general transportation. Motor vehicles which are less than 25 years old but which are 15 or more years old and which qualify as historic motor vehicles shall include but not be limited to the following makes which are no longer manufactured: Kaiser, Hudson, DeSoto, Nash, Edsel, Studebaker and Packard. (Aug. 17, 1937, 50 Stat. 679, ch. 690, title IV, § 1; Sept. 8, 1950, 64 Stat. 791, ch. 921, §§ 1, 2; 1973 Ed., § 40-101; Feb. 25, 1978, D.C. Law 2-41, § 2, 24 DCR 3629; Mar. 15, 1985, D.C. Law 5-176, § 11, 32 DCR 748.)

Cross references. — As to powers and duties of Department of Transportation, see § 40-703.

Section references. — This section is referred to in §§ 40-102, 40-104, 40-105, 40-106, and 47-1508.

Legislative history of Law 2-41. — Law 2-41 was introduced in Council and assigned Bill No. 2-83, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on July 26, 1977 and September 13, 1977, respectively. Signed by the Mayor on November 2, 1977, it was assigned Act No. 2-97 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-176. — Law 5-176 was introduced in Council and assigned Bill No. 5-832, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

Department of Vehicles and Traffic abolished. — See note to § 40-703.

Ownership following sales transaction. — Where there had been a meeting of the minds of the sellers and buyer, payment of purchase price by buyer and delivery of auto-

mobiles by the sellers, the sellers were not the “owners” within the meaning of paragraph (3) of this section, and were not liable for damage caused by buyer’s negligent operation of automobile, notwithstanding fact that notarization of assignment of title was defective and automobile was still registered in sellers’ names. *Burt v. Cordover*, App. D.C., 117 A.2d 116 (1955).

“Operate” included pushing automobile. — In view of paragraph (10) of this section, defendant, who had no operator’s permit and who was manually pushing automobile, temporarily incapable of movement under its own power, along highway and controlling its direction by manipulating the steering wheel through an open window was guilty of operating a motor vehicle without first having obtained an operator’s permit. *Richardson v. District of Columbia*, App. D.C., 134 A.2d 492 (1957).

“Operation” of motor vehicle. — Proof of physical capability of controlling a vehicle is not an element of the offense in § 40-302(e) prohibiting operating a vehicle after suspension. *Maldonado v. District of Columbia*, App. D.C., 594 A.2d 88 (1991).

Cited in *Frei v. Gordon*, App. D.C., 215 A.2d 488 (1965); *Coleman v. Cumis Ins. Soc’y, Inc.*, App. D.C., 558 A.2d 1169 (1989); *Taylor v. United States*, App. D.C., 662 A.2d 1368 (1995).

§ 40-102. Motor vehicles and trailers; expiration; certificates and tags; sale or transfer; Mayor to issue rules.

(a) Except as provided by § 40-303, any motor vehicle or trailer operated in the District of Columbia shall be registered with the Department of Transportation by the owner of that motor vehicle or trailer.

(b) Except as provided in subsections (d) and (e) of this section, a registration shall be valid for a period determined by the Mayor and shall expire at midnight of the last day of the designated period. During the 30-day period immediately preceding the date, as specified by the Mayor, on which registration expires, it shall be lawful to operate a motor vehicle or trailer registered for the ensuing registration year.

(c) The Mayor shall issue a registration certificate and identification tag or tags for a motor vehicle or trailer to the owner of the motor vehicle or trailer, if the owner:

- (1) Has applied for registration on a form supplied by the Mayor;
- (2) Has paid all applicable fines, fees, and taxes for the motor vehicle or trailer;
- (3) Has a valid certificate of title in effect for the motor vehicle or trailer; and
- (4) Has a valid document issued by the District of Columbia attesting that the vehicle meets applicable District of Columbia vehicle inspection standards as of the date of the application.

(d)(1) The Mayor shall issue annually, upon payment by a dealer of all applicable fees and taxes, dealer's registration certificates and identification tags bearing a distinguishing dealer's mark or symbol for the interchangeable use on motor vehicles and trailers;

(2) The Mayor shall issue, without charge, registration certificates and identification tags for all motor vehicles and trailers owned by the United States, the District of Columbia, and the Washington Metropolitan Area Transit Authority;

(3) The Mayor shall issue, without charge, registration certificates and identification tags for all motor vehicles and trailers officially used by any accredited representative of a foreign government;

(4)(A) The Mayor shall issue a duplicate registration certificate or identification tag or tags for any motor vehicle or trailer which is registered, upon proof satisfactory to the Mayor of the loss, mutilation, or destruction of the previously issued registration certificate or identification tags;

(B) The Mayor shall issue a dealer's proof of ownership certificate to any dealer upon application and upon proof of ownership as the Mayor may require; and

(C) A fee of \$5 shall be paid for each duplicate registration certificate issued, a fee of \$5 shall be paid for each replacement tag issued, and a fee of \$15 shall be paid for each dealer's proof of ownership certificate issued; and

(5)(A) The Mayor shall issue, for a temporary period not to exceed 30 days, a special use certificate and special use identification tags bearing a distinguishing mark to the owner of a motor vehicle or trailer upon payment of the fee of \$10;

(B) The Mayor shall issue a special use certificate and special use identification tags bearing a distinguishing mark to the owner of a motor vehicle or trailer, for the exclusive purpose of allowing that person to comply with the requirements of Chapter 2 of this title, upon payment of a fee of \$10; and

(C) The issuance of a special use certificate and special use identification tags under this subsection shall not constitute a registration of a motor vehicle or trailer for any other purposes than herein provided.

(e)(1) Except as otherwise provided in this subsection, any registration shall expire upon the sale or other transfer of the motor vehicle or trailer to another owner;

(2) Any owner selling or otherwise transferring a motor vehicle or trailer may apply the unexpired portion of the existing registration to another motor vehicle or trailer belonging to that owner, upon payment of a fee of \$5 plus any amount by which the registration fee for the newly registered motor vehicle or trailer, as computed under § 40-104, exceeds the original registration fee paid;

(3) In the case of a joint ownership, the unexpired portion of the existing registration may be applied to another motor vehicle or trailer by any person who was formerly a party to the joint ownership upon the consent of all the former joint owners;

(4) The name of a spouse may be added as joint owner to the registration of a motor vehicle or trailer, subject to the applicable provisions of law relating to the titling of motor vehicles and trailers;

(5) Upon the death of a joint owner of a motor vehicle or trailer registered under §§ 40-101, 40-102 and 40-104 to 40-106, the registration shall be transferred to the surviving joint owners upon the payment of a fee of \$5; and

(6) When the only assets of a decedent's estate requiring administration consist of no more than 2 motor vehicles, the Mayor may transfer the title to the person or persons entitled thereto or to their nominee, upon proof satisfactory to the Mayor that all debts and taxes owed by the decedent have been paid or have been provided for. If any person entitled to the transfer of title hereunder shall be a minor, the custodian or the legal guardian of the minor may nominate transferees on behalf of the minor.

(f) In order to facilitate the identification and the regulation of motor vehicles and trailers operated in the District of Columbia the Mayor shall establish:

(1) The application forms for registrations and for special use certificates;

(2) The forms of registration certificates and special use certificates;

(3) The design of identification tags; and

(4) A program for keeping records of registration, issuance of special use certificates, and transfers of registrations.

(g) The Mayor shall issue rules:

(1) To implement §§ 40-101, 40-102 and 40-104 to 40-106;

(2) To provide for the suspension or revocation of any registration issued to an owner or dealer who has violated any provision of §§ 40-101, 40-102 and 40-104 to 40-106 or Title 18, chapters 4 and 5, DCMR, or who has obtained a registration without having fully complied with all provisions of §§ 40-101, 40-102 and 40-104 to 40-106 and Title 18, chapters 4 and 5, DCMR; and

(3)(A) To establish procedures for the immobilization or impoundment of a motor vehicle or trailer for which the registration has been suspended or revoked or which is not properly registered in accordance with §§ 40-101, 40-102 and 40-104 to 40-106 and Title 18, chapters 4 and 5, DCMR; and

(B) To establish procedures for the recovery or removal of any registration certificate or identification tags issued under §§ 40-101, 40-102 and 40-104 to 40-106 and Title 18, chapters 4 and 5, DCMR, from a motor vehicle or trailer for which the registration has been suspended or revoked or which is not properly registered in accordance with this subchapter and Title 18, chapters 4 and 5, DCMR. (Aug. 17, 1937, 50 Stat. 680, ch. 690, title IV, § 2;

May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1045, ch. 313, § 1; Sept. 8, 1950, 64 Stat. 792, ch. 921, § 3; May 18, 1954, 68 Stat. 111, ch. 218, title VII, § 601; Apr. 6, 1956, 70 Stat. 102, ch. 182, § 1; July 3, 1967, 81 Stat. 108, Pub. L. 90-43, § 1; Oct. 31, 1969, 83 Stat. 173, Pub. L. 91-106, title IV, § 401; Aug. 11, 1971, 85 Stat. 314, Pub. L. 92-88, § 6; 1973 Ed., § 40-102; Apr. 7, 1977, D.C. Law 1-112, § 2, 23 DCR 8741; Apr. 26, 1977, D.C. Law 1-133, title III, § 301, 23 DCR 9697; June 24, 1980, D.C. Law 3-72, § 205, 27 DCR 2155; Apr. 3, 1982, D.C. Law 4-97, § 2, 29 DCR 765; Mar. 10, 1983, D.C. Law 4-206, § 3, 30 DCR 193; Oct. 5, 1985, D.C. Law 6-49, § 2, 32 DCR 4585; Nov. 19, 1985, D.C. Law 6-54, § 2, 32 DCR 5713; Aug. 17, 1991, D.C. Law 9-30, § 2(a), 38 DCR 4215; Apr. 26, 1994, D.C. Law 10-106, § 3, 41 DCR 1014.)

Cross references. — As to operators' permits, see Chapter 3 of this title.

As to rules and regulations relating to vehicles and traffic, see § 40-703.

As to titling fees, see § 40-703.

As to listing of odometer readings, see § 40-1306.

Section references. — This section is referred to in §§ 20-357, 40-101, 40-103, 40-104, 40-105, 40-106, 40-303, 47-1508 and 47-2001.

Effect of amendments. — D.C. Law 10-106 added (c)(4); and made related changes.

Legislative history of Law 1-112. — Law 1-112 was introduced in Council and assigned Bill No. 1-368, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 22, 1976 and December 7, 1976, respectively. Signed by the Mayor on January 11, 1977, it was assigned Act No. 1-201 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-133. — Law 1-133 was introduced in Council and assigned Bill No. 1-11, which was referred to the Committee on Transportation and Environmental Affairs, the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on October 12, 1976 and November 23, 1976, respectively. Signed by the Mayor on February 14, 1977, it was assigned Act No. 1-230 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-72. — Law 3-72 was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980 and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-97. — Law 4-97 was introduced in Council and assigned Bill No. 4-337, which was referred to the Committee on Transportation and Environmental

Affairs. The Bill was adopted on first and second readings on January 12, 1982, and January 26, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-155 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-206. — Law 4-206 was introduced in Council and assigned Bill No. 4-443, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-290 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-49. — Law 6-49 was introduced in Council and assigned Bill No. 6-273. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-68 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-54. — Law 6-54 was introduced in Council and assigned Bill No. 6-201, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on September 10, 1985, and September 24, 1985, respectively. Signed by the Mayor on September 30, 1985, it was assigned Act No. 6-77 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-19. — Law 9-19, the "Omnibus Budget Support Temporary Act of 1991," was introduced in Council and assigned Bill No. 9-205. The Bill was adopted on first and second readings on May 7, 1991, and June 4, 1991, respectively. Signed by the Mayor on June 21, 1991, it was assigned Act No. 9-43 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-30. — Law 9-30, the "District of Columbia Motor Vehicle Service Fees Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-163, which was referred to the Committee on

Public Works. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-57 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-106. — Law 10-106, the “Motor Vehicle Biennial Inspection Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-6, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on January 4, 1994, and February 4, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-194 and transmitted to both Houses of Congress for its review. D.C. Law 10-106 became effective on April 26, 1994.

Findings of Council. — Section 2 of D.C. Law 4-206 provided that the “Council of the District of Columbia finds that a staggered motor vehicle registration system would benefit the residents of the District of Columbia with improved motor vehicle registration services and procedures, by providing for the more orderly updating of motor vehicle records by a permanent staff, and by reducing the lengthy waiting time associated with the current annual renewal system.”

Delegation of authority under Law 4-206. — See Mayor’s Order 83-140, May 26, 1983.

Transfer of functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Purpose of this section is to make it difficult to perpetrate fraudulent automobile trans-

fers. *Chiplock v. Steuart Motor Co.*, App. D.C., 91 A.2d 851 (1952).

Registration laws inapplicable to federal concessionaires. — The Secretary of the Interior has exclusive authority to regulate interpretive tour service operated under contract with Department of Interior, and service therefor is immune from enforcement of District of Columbia licensing and registration requirements. *District of Columbia v. Landmark Servs., Inc.*, 416 F. Supp. 559 (D.D.C.), modified, 419 F. Supp. 91 (D.D.C. 1976), modified sub nom. *United States v. District of Columbia*, 571 F.2d 651 (D.C. Cir. 1977).

The Secretary of the Interior’s exclusive control over the shuttle service between the Mall and the Stadium under 40 U.S.C. § 804 precluded application to a federal concessionaire of local District of Columbia laws relating to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. *United States v. District of Columbia*, 571 F.2d 651 (D.C. Cir. 1977).

Negligence in issuing wrong automobile tags and registrations. — The District of Columbia government could be held liable in tort for the negligence of its employee in issuing the wrong automobile license tags and registration number for plaintiff’s car where the employee came within the “special relationship” exception to the public duty doctrine. *Powell v. District of Columbia*, App. D.C., 602 A.2d 1123 (1992).

Cited in *Smith v. District of Columbia*, App. D.C., 71 A.2d 766 (1950); *Smith, Kirkpatrick & Co. v. Continental Autos. Ltd.*, 184 F. Supp. 764 (D.D.C. 1960); *Taylor v. United States*, App. D.C., 662 A.2d 1368 (1995).

§ 40-103. Motor vehicles of Disabled American Veterans.

(a) The Mayor is authorized to provide for the issuance of a registration certificate and identification tags for a passenger motor vehicle (other than a passenger vehicle for hire) of any individual who is and may be certified as a bona fide member of the Department of the District of Columbia Disabled American Veterans to the Mayor by the Department Commander of the District of Columbia Disabled American Veterans in office at the time of the application for the registration certificate and identification tags, and is a resident of the District of Columbia. Such certificate and tags shall be issued in lieu of those required by § 40-102.

(b) The identification tags issued under this section shall bear the initials D.A.V. in letters not less than two and three-quarter inches high and in strokes not less than one-quarter inch in width followed by such markings and numerals as the Mayor may require.

(c) At any one time no individual may have more than one motor vehicle registered under this section. The fee for such certificate and tags shall be set

according to the current fee schedule established for passenger motor vehicles as required to be paid under § 40-104.(b).

(d) No registration certificate and identification tags may be issued to any individual under this section unless due proof is submitted that the individual:

(1) Is a bona fide member of the Department of the District of Columbia Disabled American Veterans of the United States as may be certified to the Mayor through the Department Commander in office at the time of the application for the registration certificate and identification tags; and

(2) Is and has been for at least 30 days, prior to filing with the Mayor an application for such certificate and tags, a bona fide resident of the District of Columbia. (1973, Ed., § 40-102a; Feb. 20, 1976, D.C. Law 1-49, § 2, 22 DCR 4694.)

Legislative history of Law 1-49. — Law 1-49 was introduced in Council and assigned Bill No. 1-27, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and

second readings on October 21, 1975 and November 4, 1975, respectively. Signed by the Mayor on November 20, 1975, it was assigned Act No. 1-69 and transmitted to both Houses of Congress for its review.

§ 40-104. Fees classified and use of proceeds designated.

(a)(1) There shall be levied, collected, and paid for each registration year for each motor vehicle or trailer required to be registered under §§ 40-101, 40-102, and 40-104 to 40-106, the registration fee provided in this section, except that in the event the Council of the District of Columbia prescribes and the Mayor of the District of Columbia issues as the official identification tags for the District of Columbia tags treated with special reflective materials designed to increase the visibility and legibility of such tags, the Council may charge a fee not exceeding \$.50 in addition to all other fees which may be required. If the markings on any such tag are specifically ordered by the person to whom the tag is to be issued, including an active Advisory Neighborhood Commissioner, a member of the District of Columbia National Guard, or a person belonging to an officially recognized organization tag group other than the Disabled American Veterans, and such markings are other than those in a regular series, a reservation fee of \$40 and an annual fee of \$20, in addition to all other fees which may be required shall be charged for such specially ordered tag.

(2) The Mayor may modify the schedule of fees established in this subsection by rulemaking, pursuant to subchapter I of Chapter 15 of Title I.

(b)(1) Class A. For each passenger vehicle, including passenger vehicles licensed under subsection (d) of § 47-2829:

(A) When wholly equipped with pneumatic tires, a registration fee shall be charged according to the manufacturer's shipping weight as follows:

Manufacturer's Shipping Weight	Registration Fee
Class I (3,499 pounds or less)	\$ 55
Class II (3,500 pounds or more)	88

(B) When wholly or partially equipped with other than pneumatic tires, double the above fees.

(2) Class B. For each commercial vehicle, tractor, and passenger-carrying vehicle for hire having a seating capacity of 8 passengers or more in addition to the driver or operator with the exception of passenger vehicles licensed under subsection (b) of § 47-2829:

(A) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of the chassis, plus the weight of the cab and body, is less than 3,000 pounds, \$95; 3,000 pounds or more but less than 4,000 pounds, \$105; 4,000 pounds or more but less than 5,000 pounds, \$123; 5,000 pounds or more but less than 6,000 pounds, \$143; 6,000 pounds or more but less than 7,000 pounds, \$163; 7,000 pounds or more but less than 8,000 pounds, \$176; 8,000 pounds or more but less than 9,000 pounds, \$200; 9,000 pounds or more but less than 10,000 pounds, \$228; 10,000 pounds or more but less than 12,000 pounds, \$291; 12,000 pounds or more but less than 14,000 pounds, \$340; 14,000 pounds or more but less than 16,000 pounds, \$408; 16,000 pounds or more, \$479; provided, that in determining the total weight of a vehicle subject to the provisions of this clause, there shall be excluded, in computing such weight, the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section.

(B) When wholly or partially equipped with other than pneumatic tires, double the above fees.

(3) Class C. For each trailer, when the manufacturer's shipping weight of the chassis, plus the weight of the body, is less than 500 pounds, \$20; 500 pounds or more but less than 1,000 pounds, \$29; 1,000 pounds or more but less than 1,500 pounds, \$48; 1,500 pounds or more but less than 2,500 pounds, \$77; 2,500 pounds or more but less than 3,500 pounds, \$109; 3,500 pounds or more but less than 6,000 pounds, \$143; 6,000 pounds or more but less than 8,000 pounds, \$176; 8,000 pounds or more but less than 10,000 pounds, \$219; 10,000 pounds or more but less than 12,000 pounds, \$291; 12,000 pounds or more but less than 16,000 pounds, \$361; 16,000 pounds or more, \$431; provided, that in determining the total weight of a trailer subject to the provisions of this Class C, there shall be excluded, in computing such weight, the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section.

(4) Class D. For each motorcycle, \$30.

(5) Class E. For each motorized bicycle, \$10.

(6) Class F. For each motor vehicle classified by the Mayor or his or her designated agent as an historic motor vehicle which meets the criteria established under § 40-101(11), \$15.

(7) Class G. For dealers' identification tags and dealers' transport identification tags, each set of tags, \$53.

(8) Class H. For each motor vehicle propelled by fuel not subject to taxation under Chapter 23 of Title 47, and motor vehicles propelled by any means other than motor fuels as defined in said chapter, double the fees provided in this subsection for classes A through D.

(c) The Mayor may prorate the fee for registration by an owner or dealer if the registration is issued by the Mayor for a period not to exceed 11 months.

(d) The proceeds from fees payable under this chapter shall be paid into the General Fund of the District of Columbia as established in the Revenue Funds Availability Act of 1975.

(e) Notwithstanding the provisions of §§ 40-101, 40-102, and 40-104 to 40-106, special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law. For the purpose of determining the fees authorized by subparagraph (A) of subsection (b)(2) and subsections (b)(3) and (b)(8) of this section, the weight of special equipment taxed in accordance with the provisions of this subsection (e) shall be excluded in computing the weight of the vehicle or trailer on which it is mounted.

(f) No annual motor vehicle registration fee shall be required for a noncommercial motor vehicle owned by any veteran who has been classified by the United States Veterans Administration as totally and permanently disabled as a result of a service incurred or aggravated condition; provided, that no more than one such vehicle per qualified veteran shall receive this fee exemption.

(g) The Mayor shall direct the Director of the Department of Transportation to design and provide application forms for the exemption provided in subsection (f) of this section. The application shall be accompanied by a statement that the veteran has been classified as totally and permanently disabled by the Veterans Administration so as to meet the requirements of this subsection, and that such disability is the result of a service incurred or aggravated condition. (Aug. 17, 1937, 50 Stat. 681, title IV, ch. 690, § 3; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1046, ch. 313, § 2; Sept. 8, 1950, 64 Stat. 793, ch. 921, §§ 4, 5, 6; May 18, 1954, 68 Stat. 112, title VI, ch. 218, §§ 602, 603, 604; Sept. 2, 1957, 71 Stat. 598, Pub. L. 85-273, §§ 1, 2; Sept. 6, 1960, 74 Stat. 816, Pub. L. 86-716, §§ 1-3; Oct. 31, 1969, 83 Stat. 174, Pub. L. 91-106, title IV, § 402; 1973 Ed., § 40-103; Oct. 21, 1975, D.C. Law 1-23, title I, § 101, 22 DCR 2091; Jan. 22, 1976, D.C. Law 1-42, § 6, 22 DCR 6317; June 15, 1976, D.C. Law 1-70, title I, § 101, 23 DCR 533; April 7, 1977, D.C. Law 1-110, § 5, 23 DCR 8740; April 19, 1977, D.C. Law 1-124, title I, § 101, 23 DCR 8749; Feb. 25, 1978, D.C. Law 2-41, § 2, 24 DCR 3629; Mar. 16, 1978, D.C. Law 2-55, §§ 2, 3, 5, 24 DCR 5424; Mar. 16, 1978, D.C. Law 2-60, § 2, 24 DCR 5778; Apr. 3, 1982, D.C. Law 4-93, § 3, 29 DCR 749; Mar. 10, 1983, D.C. Law 4-206, § 4, 50 DCR 193; June 22, 1983, D.C. Law 5-14, § 802, 30 DCR 2632; Aug. 17, 1991, D.C. Law 9-30, § 2(b), 38 DCR 4215; Mar. 17, 1993, D.C. Law 9-239, § 2, 40 DCR 625.)

Cross references. — As to hauling permit fees for certain multi-axle vehicles, see § 5-516.

As to inspection fees, see §§ 40-201 and 40-202.

As to fees for operator's permits, see § 40-301.

As to powers and duties of Department of Transportation, see § 40-703.

As to establishment of General Fund, see § 47-131.

As to motor vehicle fuel tax, see Chapter 23 of Title 47.

Section references. — This section is referred to in §§ 1-2466, 40-101, 40-102, 40-103, 40-105, 40-106, 40-202 and 47-1508.

Legislative history of Law 1-23. — Law 1-23 was introduced in Council and assigned Bill No. 1-47, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, and second

readings, and reconsideration of second reading, on April 15, 1975, June 1, 1975, June 24, 1975 and July 11, 1975, respectively. Signed by the Mayor on July 23, 1975, it was assigned Act No. 1-34 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-42. — Law 1-42 was introduced in Council and assigned Bill No. 1-161, which was referred to the Committee on the Budget. The Bill was adopted on first and second readings on July 29, 1975 and October 7, 1975, respectively. Signed by the Mayor on October 24, 1975, it was assigned Act No. 1-59 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-70. — Law 1-70 was introduced in Council and assigned Bill No. 1-229, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings and reconsiderations of final reading on February 20, 1976, March 11, 1976 and April 6, 1976, respectively. Signed by the Mayor on April 20, 1976, it was assigned Act No. 1-106 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-110. — Law 1-110 was introduced in Council and assigned Bill No. 1-255, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 23, 1976 and December 7, 1976, respectively. Signed by the Mayor on January 5, 1976, it was assigned Act No. 1-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-124. — Law 1-124 was introduced in Council and assigned Bill No. 1-375, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 3, 1976 and December 17, 1976, respectively. Signed by the Mayor on January 25, 1977, it was assigned Act No. 1-226 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-41. — See note to § 40-101.

Legislative history of Law 2-55. — Law 2-55 was introduced in Council and assigned Bill No. 2-146, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 8, 1977 and November 22, 1977, respectively. Signed by the Mayor on December 15,

1977, it was assigned Act No. 2-121 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-60. — Law 2-60 was introduced in Council and assigned Bill No. 2-164, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 22, 1977 and December 6, 1977, respectively. Signed by the Mayor on January 3, 1978, it was assigned Act No. 2-128 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-93. — Law 4-93 was introduced in Council and assigned Bill No. 4-312, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 8, 1981, and January 12, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-151 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-206. — See note to § 40-102.

Legislative history of Law 5-14. — Law 5-14 was introduced in Council and assigned Bill No. 5-74, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on April 12, 1983 and April 26, 1983, respectively. Signed by the Mayor on May 4, 1983, it was assigned Act No. 5-29 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-19. — See note to § 40-102.

Legislative history of Law 9-30. — See note to § 40-102.

Legislative history of Law 9-239. — Law 9-239, the "Motor Vehicle Specialty Tags Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-414, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 5, 1993, it was assigned Act No. 9-373 and transmitted to both Houses of Congress for its review. D.C. Law 9-239 became effective on March 17, 1993.

References in text. — The Revenue Funds Availability Act of 1975, referred to in (d), is the Act of January 22, 1976, D.C. Law 1-42.

Cited in Taylor v. United States, App. D.C., 662 A.2d 1368 (1995).

§ 40-105. Unlawful acts; penalty.

(a) It shall be unlawful:

(1) For any person to operate any motor vehicle or trailer upon any public highway of the District of Columbia (except motor vehicles or trailers operated by nonresidents exempted under the provisions of § 40-303):

(A) If such motor vehicle or trailer is not registered or covered by a dealer's registration or by a special use certificate as required by §§ 40-101, 40-102, and 40-104 to 40-106;

(B) If such motor vehicle or trailer does not have attached thereto and displayed thereon the identification tags required therefor; or

(C) If such person does not have in his possession or in the motor vehicle or trailer operated the registration certificate or special use certificate required therefor;

(2) For the owner of any motor vehicle or trailer knowingly to permit the operation thereof contrary to any provision of paragraph (1) of this subsection;

(3) To use a false or fictitious name or address in any application for registration or for a special use certificate, or any renewal or duplicate thereof, or knowingly to make any false statement or conceal any material fact in any such application.

(b) Any person violating any provision of §§ 40-101, 40-102, and 40-104 to 40-106 or the regulations made or promulgated under the authority hereof shall upon conviction thereof be subject to a fine of not more than \$300 or imprisonment of not more than 30 days, or both such fine and imprisonment. All such prosecutions shall be in the Superior Court of the District of Columbia upon information filed by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia. (Aug. 17, 1937, 50 Stat. 682, ch. 690, title IV, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; Sept. 8, 1950, 64 Stat. 794, ch. 921, § 7; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 40-104.)

Section references. — This section is referred to in §§ 40-101, 40-102, 40-104, 40-106, and 40-612.

Operator's permit required when driving anywhere in District, not just when on its public highways. — Although the prohibition against driving an unregistered vehicle applies only if the vehicle is operated "upon any public highway of the District of Columbia," one may not drive a car without an operator's permit or learner's permit anywhere in the District of Columbia. *United States v. Botts*, 110 WLR 1257 (Super. Ct. 1982).

The absence of a front tag on an automobile constituted reasonable articulable suspicion justifying stop by police officer. *Lewis v. United States*, App. D.C., 632 A.2d 383 (1993).

Proving "operating" does not require a witness placing appellee inside of the vehicle. Appellee's admission that he had been driving the car, together with the facts that the appellee was observed by the police officer standing next to the vehicle urinating, the keys were in the ignition, the headlights were on, and the engine was running, was sufficient to establish a *prima facie* case of "operating" the motor vehicle. *District of Columbia v. Whitley*, App. D.C., 640 A.2d 710 (1994).

Police may stop and question driver when infraction of motor vehicle code is suspected. *United States v. Hill*, 458 F. Supp. 31 (D.D.C. 1978).

Where police officer saw bag of trash thrown into public street from window of automobile standing at curb with motor running, and where the automobile's occupant, after being approached by the officer and questioned about the bag, alighted from the automobile, picked up the bag and put it back inside the car, it was not unlawful for the officer to ask the occupant to produce his operator's permit and the registration card for the automobile, which inquiries resulted in discovery that the occupant's permit had been revoked and, later, that the automobile had been stolen. *United States v. Weston*, 466 F.2d 435 (D.C. Cir. 1972).

Propriety of impoundment and inventory search. — Where all the occupants of a vehicle were under arrest and the vehicle lacked valid tags, it was proper to impound the vehicle. Once the vehicle was properly impounded, an inventory of its contents leading to the discovery of evidence was proper. *Punch v. United States*, App. D.C., 377 A.2d 1353 (1977), cert. denied, 435 U.S. 955, 98 S. Ct. 1586, 55 L. Ed. 2d 806 (1978).

Police impoundment and subsequent inventory search of vehicle were proper where its illegible temporary tags had been removed and seized, and the vehicle could not under this section have been left standing on the public way without tags, but the search of a flight bag found inside the car trunk was beyond the scope of the inventory search. *United States v. Hill*, 458 F. Supp. 31 (D.D.C. 1978).

Weapon noticed lawfully seized. — The seizure of a pistol that was in plain view of an officer looking at the interior of the car with a flashlight while another officer was engaged in conversation with the defendant did not violate the 4th Amendment. *Palmore v. United States*, App. D.C., 290 A.2d 573 (1972), *aff'd*, 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342 (1973).

Where police first noticed weapon in glove compartment of car when it was opened by defendant to secure the car's registration during stop on account of illegible vehicle tag, subsequent seizure of the weapon and arrest resulting therefrom were proper. *United States v. Hill*, 458 F. Supp. 31 (D.D.C. 1978).

Suppression of weapons where circumstances insufficient to justify stop. — Where police officers who stopped defendant's

car assertedly to check possession and validity of defendant's driver's permit and automobile registration, but had not observed the defendant violate any traffic laws and had no adverse prior information about the defendant or his vehicle before making the stop, and where the officers acknowledged that the defendant had aroused their suspicions by driving around in a residential area and by the fact that he appeared to be watching the officers in his rear view mirror, the defendant's acts as reported were too innocuous to warrant temporary seizure for questioning and the defendant was entitled to suppression of a .38-caliber revolver and an unregistered sawed-off shotgun found in the search of his vehicle incident to his arrest on an outstanding traffic warrant. *United States v. Montgomery*, 561 F.2d 875 (D.C. Cir. 1977).

Cited in *Hill v. United States*, App. D.C., 512 A.2d 269 (1986); *Madison v. United States*, App. D.C., 512 A.2d 279 (1986); *McMillan v. United States*, App. D.C., 527 A.2d 739 (1987); *Powell v. District of Columbia*, App. D.C., 602 A.2d 1123 (1992); *Taylor v. United States*, App. D.C., 662 A.2d 1368 (1995).

§ 40-106. Provisions not affected.

(a) Nothing in §§ 40-101, 40-102, and 40-104 to 40-106 shall be construed to affect the power of the Council of the District of Columbia, under the District of Columbia Traffic Act, 1925, as amended, to make rules and regulations, not inconsistent with the provisions of §§ 40-101, 40-102, and 40-104 to 40-106, with respect to the registration of motor vehicles.

(b) Nothing in §§ 40-101, 40-102, and 40-104 to 40-106 shall be construed to relieve any person from the payment of any license tax under Chapters 28 and 30 of Title 47. (Aug. 17, 1937, 50 Stat. 682, ch. 690, title IV, § 5; 1973 Ed., § 40-105.)

Section references. — This section is referred to in §§ 40-101, 40-102, 40-104 and 47-1508.

References in text. — The District of Columbia Traffic Act, 1925, as amended, referred to in subsection (a), is the Act of March 3, 1925, 43 Stat. 1121, ch. 443.

Chapter 30 of Title 47, referred to in subsection (b), was repealed by D.C. Law 5-136, effective March 13, 1985.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (292, 293, 295 to 299) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in

Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Taylor v. United States*, App. D.C., 662 A.2d 1368 (1995).

*Subchapter II. Rental Vehicle Tax.***§ 40-111. Definitions.**

For the purposes of this subchapter:

(1) The term “jurisdiction” means any state, territory or possession of the United States, the District of Columbia, a foreign country or a state or province of a foreign country.

(2) The term “motor vehicle” means any vehicle propelled by an internal-combustion engine and designed to carry passengers. The term “motor vehicle” shall not include road rollers, farm tractors, trucks, motorcycles, motorized bicycles, vehicles with a seating capacity of 10 or more persons, vehicles propelled only upon stationary rails and tracks, and battery-operated wheel-chairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.

(3) The term “owner” means the person, corporation or firm that holds the legal title to a motor vehicle or utility trailer, the registration of which is required in the District of Columbia. If a motor vehicle is the subject of an agreement for the conditional sale or lease thereof to an operator of a rental fleet, with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee of said vehicle shall be deemed the owner for the purposes of this subchapter. If a mortgagor of a motor vehicle is entitled to possession of said vehicle, such mortgagor shall be deemed to be the owner.

(4) The term “preceding year” means the period of 12 consecutive months immediately prior to September 1st of the year immediately preceding the commencement of the registration or license year for which allocation registration, as provided in § 40-113, is sought.

(5) The term “rental fleet” or “fleet” means 5 or more rental vehicles or 5 or more utility trailers which a rental operator designates as a rental fleet.

(6) The term “rental operator” means an owner of 5 or more rental vehicles or utility trailers who is engaged in the business of renting or leasing, or of offering to rent or lease, to others, such vehicles or trailers without drivers.

(7) The term “rental transaction” means the renting or leasing of a rental vehicle or utility trailer and shall be deemed to occur in the jurisdiction where such vehicle or trailer first comes into possession of the person, firm or corporation renting or leasing said vehicle or trailer.

(8) The term “rental vehicle” means a motor vehicle owned by a rental operator and which is a part of a rental fleet. The term “rental vehicle” shall not include motor vehicles which are registered for commercial, livery, sightseeing or taxi purposes, nor shall the term include hearses.

(9) The term “utility trailer” means a vehicle without motor power intended or used for carrying property and drawn or intended to be drawn by a motor vehicle, whether such vehicle without motor power carries the weight of the property wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle. For the purposes of this subchapter,

the term “utility trailer” shall be deemed to include only those vehicles which are owned by a rental operator and which are part of a rental fleet. (1973 Ed., § 40-111; Mar. 6, 1979, D.C. Law 2-157, § 2, 25 DCR 6995; Mar. 15, 1985, D.C. Law 5-176, § 3, 32 DCR 748.)

Section references. — This section is referred to in §§ 40-703, 47-2002, 47-2202, and 47-2202.1.

Legislative history of Law 2-157. — Law 2-157 was introduced in Council and assigned Bill No. 2-284, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-326 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-176. — Law 5-176 was introduced in Council and assigned Bill No. 5-382, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

Cited in *Coleman v. Cumis Ins. Soc’y, Inc.*, App. D.C., 558 A.2d 1169 (1989).

§ 40-112. Interstate and intrastate privileges.

Rental fleets and utility trailers, owned by any person or firm engaging in the business of renting such vehicle, shall be extended full interstate and intrastate privileges, provided the following:

(1) Such vehicle or trailers are part of a rental fleet and are identifiable as being a part of such fleet; and

(2) Such person or firm registers a portion of said vehicles or trailers as provided in § 40-113. (1973 Ed., § 40-112; Mar. 6, 1979, D.C. Law 2-157, § 3, 25 DCR 6995.)

Legislative history of Law 2-157. — See note to § 40-111.

§ 40-113. Registration.

(a) *Procedure for registration.* — The Mayor of the District of Columbia shall institute a procedure whereby a rental operator shall register, with the District of Columbia Department of Transportation or its successor agency, a portion of the rental vehicles or utility trailers comprising a fleet. The number of vehicles or trailers to be registered shall be calculated according to the provisions of this section.

(b) *Rental vehicles.* — For the purpose of determining the number of rental vehicles within each rental fleet which are to be registered under this section, the following formula shall be used for each fleet:

(1) Divide the gross revenue arising from all rental vehicle transactions occurring in the District of Columbia during the preceding year by the total gross revenue received in the preceding year from rental vehicle transaction in all jurisdictions in which such vehicles are operated; and

(2) Multiply the percentage obtained in paragraph (1), above, by the total number of rental vehicles in the fleet. The resulting figure shall be the number of rental vehicles that shall be registered in the District of Columbia.

(c) *Utility trailers.* — Each rental operator in the District of Columbia who is engaged in the business of renting utility trailers shall register a number of such trailers equal to the average number of such trailers rented in the District of Columbia during the preceding year. (1973 Ed., § 40-113; Mar. 6, 1979, D.C. Law 2-157, § 4, 25 DCR 6995.)

Section references. — This section is referred to in §§ 40-111 and 40-112.

Legislative history of Law 2-157. — Law 2-157 was introduced in Council and assigned Bill No. 2-284, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, it was

assigned Act No. 2-326 and transmitted to both Houses of Congress for its review.

Transfer of functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 40-114. Mayor to make rules and regulations.

The Mayor is authorized to promulgate such rules and regulations as are necessary to carry out the purposes of this subchapter. (1973 Ed., § 40-114; Mar. 6, 1979, D.C. Law 2-157, § 7, 25 DCR 6995.)

Legislative history of Law 2-157. — See note to § 40-111.

Subchapter III. International Registration Plan Agreements.

§ 40-121. Definitions.

For the purposes of this subchapter, the term:

(1) “Apportioned operator” means registrant of a fleet of apportioned vehicles.

(2) “Apportionment” means registration based on a proportional payment of registration fees, whether determined by a quotient of miles traveled, revenue received, average presence, or any other similar method.

(3) “Apportionable vehicle” means any vehicle, except recreational vehicles, vehicles displaying restricted plates, buses used in transportation of chartered parties and government-owned vehicles, used or intended for use in 2 or more member jurisdictions that allocate or proportionally register vehicles and are used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property and:

(A) Is a power unit having two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds;

(B) Is a power unit having three or more axles, regardless of weight; or

(C) Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

(4) “Base jurisdiction” means, for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where mileage is accrued by the fleet, and where operational records of such fleet are maintained or can be made available in accordance with section 1602 of the International Registration Plan (“IRP”).

(5) “Base plate” means the plate issued by the base jurisdiction and shall be the only registration identification plate issued for the vehicle by any member jurisdiction.

(6) “Combined Gross Vehicle Weight” (“CGVW”) means the total unladen weight of a combination of vehicles and weight of the load carried on that combination of vehicles.

(7) “Established place of business” means a physical structure owned, leased, or rented by the fleet registrant and used as his or her main office. The physical structure shall be designated by a street number or road location, be open during normal business hours, and have located within it:

(A) A telephone or telephones publicly listed in the name of the fleet registrant;

(B) A person or persons conducting the fleet registrant’s business; and

(C) The operational records of the fleet.

(8) “Fleet” means one or more apportionable vehicles.

(9) “Interjurisdictional movement” means vehicular movement between or through two or more jurisdictions.

(10) “Intrajurisdictional movement” means vehicular movement from one point within a jurisdiction to another point within the same jurisdiction.

(11) “IRP” means the abbreviation for the reciprocal agreement, the International Registration Plan.

(12) “IVMR” means Individual Vehicle Mileage Record which serves as the original record generated in the course of actual vehicle operation and is used as a source document to verify the registrant’s application for accuracy.

(13) “Member jurisdiction” means a jurisdiction which has applied for membership and has been accepted by all members of the IRP.

(14) “Motor carrier” means an individual, partnership, or corporation engaged in the transportation of goods or persons.

(15) “Owner” means any person, firm, or corporation other than the lienholder holding legal title to a vehicle.

(16) “Properly registered vehicle” means a vehicle which has been registered in full compliance with the laws of all jurisdictions in which it is intended to operate.

(17) “Reciprocity” means the reciprocal granting of rights and privileges to vehicles properly registered under the IRP and to vehicles not so registered if these vehicles are subject to separate reciprocity agreements, arrangements, declarations, or understandings.

(18) “Trip permit” means a temporary permit issued by a jurisdiction in lieu of regular registration reciprocity.

(19) “Uniform mileage schedule” means the official IRP form provided to record mileage by jurisdictions and total fleet miles derived from operational records. (Sept. 5, 1997, D.C. Law 12-14, § 2, 44 DCR 3620.)

Temporary addition of subchapter. — Sections 2-7 and 9 of D.C. Law 11-189 added this subchapter.

Section 10(b) of D.C. Law 11-189 provided that the act shall expire on the 225th day of its having taken effect or on the effective date of

the International Registration Plan Agreement Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary addition of this subchapter, see §§ 2-7 and 9 of the International Registration Plan Agreement Emergency Act of 1996 (D.C. Act

11-291, July 9, 1996, 43 DCR 4152), §§ 2-7 and 9 of the International Registration Plan Agreement Congressional Review Emergency Act of 1996 (D.C. Act 11-465, December 30, 1996, 44 DCR 161), and §§ 2-7 and 9 of the International Registration Plan Agreement Congressional Review Emergency Act of 1997 (D.C. Act 12-17, March 3, 1997, 44 DCR 1756).

Section 10 of D.C. Act 12-17 provides for the application of the act.

Legislative history of Law 12-14. — Law 12-14, the “International Registration Plan

Agreement Act of 1997,” was introduced in Council and assigned Bill No. 12-19. The Bill was adopted on first and second readings on March 4, 1997, and May 6, 1997, respectively. Signed by the Mayor on May 23, 1997, it was assigned Act No. 12-91 and transmitted to both Houses of Congress for its review. D.C. Law 12-14 became effective on September 5, 1997.

References in text. — The International Registration Plan, referred to in (4), is defined at 49 U.S.C. § 31701(4).

§ 40-122. Reciprocal agreements.

(a) Notwithstanding any other provision of the law, the Mayor is authorized to enter into reciprocal agreements on behalf of the District of Columbia with duly authorized representatives of any jurisdiction of the United States or a foreign country, providing for the registration of vehicles on an apportionment or allocation basis. In the exercise of this authority, the Mayor is expressly authorized to enter into and become a member of the IRP, or such other designation that may, from time to time, be given to such a plan.

(b) The IRP and any other agreements that this subchapter authorizes the Mayor to enter into shall take precedence over any District of Columbia law or regulation that may be in conflict with these agreements. (Sept. 5, 1997, D.C. Law 12-14, § 3, 44 DCR 3620.)

Temporary addition of subchapter. — See note to § 40-121.

Legislative history of Law 12-14. — See note to § 40-121.

§ 40-123. Registration.

(a) The Mayor shall implement a program for owners and apportioned operators to obtain apportioned registrations for their fleets as promulgated under the IRP.

(b) Any vehicle qualifying for IRP and that the lists the District of Columbia as the established place of business must declare the District of Columbia as its base jurisdiction for purpose of the IRP and obtain a base plate from the District of Columbia.

(c) Vehicles qualifying for the IRP and engaged in interjurisdictional movement, but not apportioned or covered by reciprocity, shall acquire a trip permit prior to entering the District of Columbia.

(d) Trucks and truck tractors, combinations of vehicles having a combined gross vehicle weight of 26,000 pounds or less, and buses used in transportation of chartered parties may be proportionally registered at the option of the registrant. (Sept. 5, 1997, D.C. Law 12-14, § 4, 44 DCR 3620.)

Temporary addition of subchapter. — See note to § 40-121.

Legislative history of Law 12-14. — See note to § 40-121.

§ 40-124. Interjurisdictional and intrajurisdictional privileges.

(a) The District of Columbia as a member jurisdiction will provide reciprocity to fleet vehicles that are engaged in interjurisdictional movement and intrajurisdictional movement, and are properly registered with another member jurisdiction.

(b) All apportioned operators of fleet vehicles are required to have available for inspection an IVMR and must identify the mileage accumulated within the District of Columbia within one mile. Inspections of the IVMR may occur in combination with the performance of law enforcement duties related to violations of a municipal traffic code, conducting road-side vehicle inspections, and investigating vehicles not properly registered. (Sept. 5, 1997, D.C. Law 12-14, § 5, 44 DCR 3620.)

Temporary addition of subchapter. — **Legislative history of Law 12-14.** — See note to § 40-121.

§ 40-125. Auditing.

Pursuant to provisions of IRP, the Mayor shall adopt audit procedures to review the uniform mileage schedules and fleet records of apportioned operators declaring the District of Columbia as their base jurisdiction. The audit procedures shall involve at least 15% of the IRP apportioned vehicles declaring the District of Columbia as their base jurisdiction base over a 5-year period. The 5-year period will commence October 1, 1997. (Sept. 5, 1997, D.C. Law 12-14, § 6, 44 DCR 3620.)

Temporary addition of subchapter. — **Legislative history of Law 12-14.** — See note to § 40-121.

§ 40-126. Fees.

The Mayor shall establish a registration fee schedule for commercial vehicles to carry out the purposes of this subchapter. The fees which this subchapter generates shall be placed in a designated account and used to offset the cost of implementing the provisions of this subchapter. (Sept. 5, 1997, D.C. Law 12-14, § 7, 44 DCR 3620.)

Temporary addition of subchapter. — **Legislative history of Law 12-14.** — See note to § 40-121.

§ 40-127. Rules.

Within 90 days after enactment of this subchapter, the Mayor shall issue rules to implement and enforce the provisions of this subchapter pursuant to Chapter 15 of Title 1.

Temporary addition of subchapter. — **Legislative history of Law 12-14.** — See note to § 40-121.

CHAPTER 2. INSPECTION.

Sec.	Sec.
40-201. Fee.	40-204. Vehicles exempt from fee.
40-202. Motor Vehicle Biennial Inspection Fund.	40-205. Vehicles not inspected, or unsafe.
40-203. Appropriations for inspection facilities.	40-206. Penalties.
	40-207. Regulations by Mayor.
	40-208. "Motor vehicle" defined.

§ 40-201. Fee.

(a) Except as otherwise currently provided in § 601 of Title 18 of the District of Columbia Municipal Regulations or as otherwise provided by the Council of the District of Columbia, all motor vehicles and trailers registered in the District of Columbia shall be inspected for safety and exhaust emissions at periodic intervals not more than 2 years apart. At the time of the registration of each motor vehicle or trailer there shall be levied and collected an inspection fee which shall be included in and be a part of the total registration fee. The Mayor may issue inspection stickers, without requiring safety and exhaust emissions inspections, for new passenger vehicles not previously registered in any jurisdiction. The new vehicle inspections stickers may be valid for a 2-year period.

(b) The Mayor may prescribe regulations and establish a fee to permit a person who owns a motor vehicle or trailer not required to be registered in the District of Columbia to have such motor vehicle or trailer inspected for safety or exhaust emissions in the District of Columbia. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 1; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 1; Oct. 12, 1968, 82 Stat. 1002, Pub. L. 90-567, § 1; Oct. 31, 1969, 83 Stat. 174, Pub. L. 91-106, title IV, § 403; 1973 Ed., § 40-201; Apr. 7, 1977, D.C. Law 1-110, § 3, 23 DCR 8740; Feb. 25, 1978, D.C. Law 2-41, § 4, 24 DCR 3629; Mar. 16, 1982, D.C. Law 4-82, § 2, 29 DCR 159; Apr. 3, 1982, D.C. Law 4-97, § 8, 29 DCR 765; July 1, 1982, D.C. Law 4-122, § 3, 29 DCR 2080; Aug. 17, 1991, D.C. Law 9-30, § 3, 38 DCR 4215; Apr. 26, 1994, D.C. Law 10-106, § 2(a), 41 DCR 1014.)

Cross references. — As to registration fees, see § 40-104.

As to other provisions concerning supervision, control, and inspection of motor vehicles, see § 40-703.

Legislative history of Law 1-110. — Law 1-110 was introduced in Council and assigned Bill No. 1-255, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings in November 23, 1976 and December 7, 1976, respectively. Signed by the Mayor on January 5, 1976, it was assigned Act No. 1-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-41. — Law 2-41 was introduced in Council and assigned Bill No. 2-83, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on July

26, 1977 and September 13, 1977, respectively. Signed by the Mayor on November 2, 1977, it was assigned Act No. 2-97 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-82. — Law 4-82 was introduced in Council and assigned Bill No. 4-302, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 24, 1981, and December 8, 1981, respectively. Signed by the Mayor on December 21, 1981, it was assigned Act No. 4-136 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-97. — See note to § 40-301.1.

Legislative history of Law 4-122. — See note to § 40-303.

Legislative history of Law 9-19. — Law 9-19, the "Omnibus Budget Support Temporary

Act of 1991," was introduced in Council and assigned Bill No. 9-205. The Bill was adopted on first and second readings on May 7, 1991, and June 4, 1991, respectively. Signed by the Mayor on June 21, 1991, it was assigned Act No. 9-43 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-30. — Law 9-30, the "District of Columbia Motor Vehicle Services Fees Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-163, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-57 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-106. — Law 10-106, the "Motor Vehicle Biennial Inspection Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-6, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-194 and transmitted to both Houses of Congress for its review. D.C. Law 10-106 became effective on April 26, 1994.

District cannot be held liable for negli-

gent auto inspection. — As a matter of law, the District of Columbia, in the performance of its annual motor vehicle inspection responsibilities, owes no duty to any individual member of the community and therefore cannot be held liable by a private individual for negligence in such performance. *Shanklin v. District of Columbia*, 111 WLR 385 (Super. Ct. 1983).

Inspection laws inapplicable to federal concessionaires. — The Secretary of the Interior has exclusive authority to regulate an interpretive tour service operated under contract with the Department of the Interior, and the service therefor is immune from enforcement of District of Columbia licensing and registration requirements. *District of Columbia v. Landmark Servs., Inc.*, 416 F. Supp. 559 (D.D.C.), modified, 419 F. Supp. 91 (D.D.C. 1976), modified sub nom. *United States v. District of Columbia*, 571 F.2d 651 (D.C. Cir. 1977).

The Secretary of the Interior's exclusive control over the shuttle service between the Mall and the Stadium under 40 U.S.C. § 804 precluded application to a federal concessionaire of local District of Columbia laws relating to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. *United States v. District of Columbia*, 571 F.2d 651 (D.C. Cir. 1977).

§ 40-202. Motor Vehicle Biennial Inspection Fund.

(a)(1) There is hereby established the District of Columbia Motor Vehicle Biennial Inspection Fund ("the Fund"). The Fund shall be a revolving fund and not be a part of nor lapse into the General Fund of the District or any other fund of the District.

(2) The Fund shall be classified as a governmental fund and shall be accounted for in accordance with Subchapter V of Chapter 3 of Title 47, and any other applicable law.

(b) The Mayor shall administer the Fund to finance the following:

(1) The implementation, oversight, operation, and periodic upgrading of the District of Columbia's Enhanced Vehicle Emissions Inspection Program and its vehicle safety inspection program; and

(2) The purchase, maintenance, and upgrading of equipment; program administration; technical skills training; contracts for services; and any other activities necessary to comply with federal and District of Columbia vehicle emissions and safety inspections legislative mandates.

(c) The inspection fee levied and collected pursuant to § 40-201, shall be established in an amount sufficient to cover the costs of implementation, operation, and periodic upgrading of the District of Columbia's vehicle emissions and safety inspection programs, and shall be deposited into the Fund. The Mayor may, from time to time, adopt rules that adjust the inspection fee as necessary to compensate the District for the cost of implementing, overseeing, operating, and upgrading the vehicle emissions and safety inspection

programs, and such adjustments shall be made in accordance with an evaluation of the annual audited accounting required by subsection (d) of this section.

(d) Obligations and expenditures of amounts from the Fund shall be based on an annual appropriation approved by Congress following the submission of a budgetary request by the Mayor. As part of the Mayor's annual budgetary request, the Mayor shall submit an audited accounting of the use of the Fund during the previous fiscal year. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 2; 1973 Ed., § 40-202; Sept. 5, 1997, D.C. Law 12-13, § 2, 44 DCR 3618)

Effect of amendments. — D.C. Law 12-13 rewrote the section.

Legislative history of Law 12-13. — Law 12-13, the "Motor Vehicle Biennial Inspection Fund Act of 1997," was introduced in Council and assigned Bill No. 12-18, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on March 4, 1997, and May 6, 1997, respectively. Signed by the Mayor on May 23, 1997, it was assigned Act No. 12-90 and transmitted to both Houses of Congress for its review. D.C. Law 12-13 became effective on September 5, 1997.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by

a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

§ 40-203. Appropriations for inspection facilities.

The annual estimates of appropriations for the government of the District of Columbia for the fiscal year 1939 and succeeding fiscal years shall include estimates of appropriations for the construction and/or rental and/or leasing of ground and buildings, the purchase of equipment and supplies, and the payment of salaries of mechanics, laborers, clerks, and other employees to carry out the annual inspection of all motor vehicles and trailers in the District of Columbia. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 3; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 2; 1973 Ed., § 40-203.)

§ 40-204. Vehicles exempt from fee.

All motor vehicles and trailers owned and officially used by the government of the United States or by the government of the District of Columbia or by the

representatives of foreign governments, shall be subject to annual inspection, such inspections to be furnished without charge. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 4; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 3; 1973 Ed., § 40-204.)

Cross references. — As to publicly owned vehicles, see Chapter 9 of this title.

§ 40-205. Vehicles not inspected, or unsafe.

The Mayor of the District of Columbia or his designated agent may refuse to register any motor vehicle or trailer which has not been inspected as required, or which is unsafe or improperly equipped, or otherwise unfit to be operated, and for like reason he may revoke or suspend any registration already made; provided, that the provisions of § 40-302(a) shall be applicable in all cases where registration is refused, revoked, or suspended under the terms of this chapter. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 5; 1973 Ed., § 40-205.)

Cross references. — As to administrative procedure, see Chapter 15 of Title 1.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-206. Penalties.

Any individual, partnership, firm, or corporation found guilty of using or permitting the use of any unregistered motor vehicle or trailer, or who is found guilty of using or permitting the use of the same during the period for which any such vehicle's registration is revoked or suspended under the terms of this chapter, shall, for each such offense, be fined not more than \$300. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 6; 1973 Ed., § 40-206.)

§ 40-207. Regulations by Mayor.

The Mayor of the District of Columbia shall make such regulations as in his judgment are necessary for the administration of this chapter, and may affix thereto such reasonable fines and penalties as in his judgment are necessary to enforce such regulations. The Mayor may issue any rules or regulations or amend any existing rules or regulations as needed to comply with the requirements of federal laws and regulations in implementing the District's vehicle exhaust emission regulation and inspection program, or as needed to comply with federal grant eligibility requirements. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 7; 1973 Ed., § 40-207; Apr. 26, 1994, D.C. Law 10-106, § 2(b), 41 DCR 1014.)

Cross references. — As to rules and regulations, see §§ 40-102, 40-201, 40-301, and 40-703.

Legislative history of Law 10-106. — See note to § 40-201.

§ 40-208. “Motor vehicle” defined.

As used in this chapter the term “motor vehicle” means all vehicles propelled by internal combustion engines, electricity, or steam. The term “motor vehicle” shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 8, as added Mar. 15, 1985, D.C. Law 5-176, § 10, 32 DCR 748.)

Legislative history of Law 5-176. — Law 5-176, “Motor Vehicle Definition Wheelchair Exception Amendment Act of 1984,” was introduced in Council and assigned Bill No. 5-382, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on

December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

Cited in *Coleman v. Cumis Ins. Soc’y, Inc.*, App. D.C., 558 A.2d 1169 (1989).

CHAPTER 3. OPERATORS' PERMITS.

Sec.	Sec.
40-301. Fee; examination; age requirements; lost permits; provisions for armed forces personnel; contents; operation without permit prohibited; restrictions for minors.	penalty for operation with revoked or suspended license.
40-301.1. Driver Education Program Fund.	40-302.1. Revocation of motor vehicle operator's permit.
40-302. Revocation or suspension; new permit after revocation; nonresidents;	40-302.2. Suspension of minor's motor vehicle operator's permit for alcohol violation.
	40-303. Exemptions.

§ 40-301. Fee; examination; age requirements; lost permits; provisions for armed forces personnel; contents; operation without permit prohibited; restrictions for minors.

(a)(1) The Mayor of the District of Columbia or his designated agent shall, upon application, the payment of a fee of \$20, and compliance with such regulations as the Mayor may prescribe, issue a motor vehicle operator's permit valid for a period not in excess of 4 years, to any individual 16 years of age or over who, after examination, in the opinion of the Mayor or his designated agent, is mentally, morally, and physically qualified to operate a motor vehicle in such manner as not to jeopardize the safety of individuals or property. The Mayor or his designated agent shall cause each applicant to be examined as to his knowledge of the traffic regulations of the District and shall require the applicant to give a practical demonstration, or produce evidence acceptable to the Mayor or his designated agent, of his ability to operate a motor vehicle within a congested portion of the District, except that upon renewal of any such operator's permit such examination and demonstration may be waived in the discretion of the Mayor or his designated agent. No practical demonstration shall be required for a motorized bicycle permit. Should the Mayor or his designated agent believe that the issuance or reissuance of a permit in accordance with the provisions of this chapter may prove a menace to public safety, he or his agent may refuse the issuance or reissuance thereof. No operator's permit issued to any individual under 18 years of age shall authorize the operation by such individual while he is under the age of 18 years of any motor vehicle other than a passenger vehicle or motorcycle or motorized bicycle used solely for purposes of pleasure and not for compensation.

(2) The Mayor or his designated agent may, upon application and the payment of a fee of \$15, issue a learner's permit, valid for a period of 6 months, to any applicant for a motor vehicle operator's permit, 16 years of age or over, who has successfully passed all parts of the examination other than the driving demonstration test. Such permit shall entitle the permittee, while having such permit in his immediate possession, to operate a passenger motor vehicle used solely for purposes of pleasure and not for compensation when accompanied by the holder of a valid motor vehicle operator's permit who is occupying a seat beside such permittee.

(3) Any pupil 15 years of age or over enrolled in a high school or junior high school driver education and training course approved by the Mayor or his designated agent may, without obtaining either an operator's or a learner's permit, operate a dual control motor vehicle at such times as such pupil is under instruction and accompanied by a licensed motor vehicle driving instructor; provided, that such instructor shall at all times while he is engaged in such instruction have on his person a certificate from the principal or other person in charge of such school, stating that such instructor is officially designated to instruct pupils enrolled in such course, and whenever demand is made by a police officer such instructor shall display to him such certificate.

(4) In the event an operator's permit or a learner's permit issued under the authority of this section is lost or destroyed, or requires replacement for any reason, other than through error or other act of the Mayor, not caused by the person to whom such permit was issued, such person may obtain a duplicate or replacement operator's permit upon payment of a fee of \$5, or such person may obtain a duplicate or replacement learner's permit upon payment of a fee of \$3.

(5) Enlisted men of the Army, Navy, Air Force, Marine Corps, and Coast Guard shall be issued, without charge, a permit to operate government-owned vehicles, while engaged in official business, upon the presentation of a certificate from their commanding officers to the effect that they are assigned to operate a government vehicle and are qualified to drive, and upon proving to the satisfaction of the Director of the Department of Transportation that they are familiar with the traffic regulations of the District of Columbia.

(6) Notwithstanding the provisions of this subsection, the Mayor or his designated agent may, upon compliance with such regulations as the Mayor may prescribe, extend for a period not in excess of 6 years the validity of the operator's permit of any person who is a resident of the District and who is on active duty outside the District in the armed forces or the Merchant Marine of the United States and who was at the time of leaving the District the holder of a valid operator's permit.

(a-1)(1) The Mayor and the Board of Elections and Ethics shall jointly develop an application form and a change of name and address form by January 1, 1989, which shall allow an applicant wishing to register to vote to do so by the use of a single form containing the necessary information for voter registration and the information required for the issuance, renewal, or correction of the applicant's driver's permit or identification card.

(2) Commencing not later than May 1, 1989, the Mayor shall provide each qualified elector who applies for the issuance, renewal, or correction of any type of driver's permit or for an identification card an opportunity to complete an application to register to vote by use of a single form containing the necessary required information for the issuance, renewal, or correction of the driver's permit or identification card.

(3) The Mayor shall forward all new applications to the Board of Elections and Ethics within 10 days of receipt.

(4) Applications received from the Mayor shall be considered received by the Board of Elections and Ethics as of the date the application was made.

(b) Each operator's permit shall state the name and address of the permittee, together with such other matter as the Mayor may by regulation prescribe, and shall bear the signature of the permittee. Each operator's permit issued or renewed on or after January 1, 1988, shall contain, as part of the permit, a uniform donor card as described in § 2-1504(b).

(c) Any individual to whom a license or permit to operate a motor vehicle has been issued shall have the license or permit in his or her immediate possession at all times while operating a motor vehicle in the District of Columbia and shall exhibit the license or permit to any police officer upon demand. Any person who fails to comply with the requirements of this subsection shall, upon conviction, be fined not less than \$10 nor more than \$50.

(d) No individual shall operate a motor vehicle in the District, except as provided in § 40-303, without first having obtained an operator's permit or learner's permit issued under the provisions of this chapter. Except as provided in subsection (d-1) of this section, any individual violating any provision of this subsection shall be fined not more than \$300 or shall be imprisoned not more than 90 days.

(d-1) Any individual who operates a motor vehicle with a District of Columbia permit expired for not more than 90 days shall be subject to a civil fine of not more than \$100 pursuant to §§ 40-604(b) and 40-605, and shall not be subject to the criminal penalties contained in subsection (d) of this section.

(e) Nothing in this chapter shall relieve any individual from compliance with § 47-2829(e).

(f) For purposes of this section and §§ 40-302 and 40-303 the term "motor vehicle" means all vehicles propelled by internal combustion engines, electricity, or steam. The term "motor vehicle" shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.

(g) [Expired]. (Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 7; July 3, 1926, 44 Stat. 812, ch. 739, § 2; Feb. 18, 1929, 45 Stat. 1226, ch. 258; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2; June 20, 1939, 53 Stat. 850, ch. 231; Nov. 25, 1942, 56 Stat. 1023, ch. 642, § 2; Dec. 15, 1944, 58 Stat. 806, ch. 589, § 1; Apr. 20, 1948, 62 Stat. 173, ch. 215, §§ 1, 2; Aug. 16, 1954, 68 Stat. 732, ch. 741, §§ 1, 2, 3, 4, 5; July 24, 1956, 70 Stat. 633, ch. 695, § 2; Oct. 3, 1962, 76 Stat. 710, Pub. L. 87-737, § 1; Mar. 18, 1964, 78 Stat. 167, Pub. L. 88-287, § 1; Oct. 31, 1969, 83 Stat. 174, Pub. L. 91-106, title IV, § 405; 1973 Ed., § 40-301; Apr. 7, 1977, D.C. Law 1-110, § 4, 23 DCR 8740; Apr. 26, 1977, D.C. Law 1-133, title II, § 201(b), 23 DCR 9697; Sept. 12, 1978, D.C. Law 2-104, § 601, 25 DCR 1275; Oct. 8, 1981, D.C. Law 4-36, § 2, 28 DCR 3383; Apr. 3, 1982, D.C. Law 4-97, § 6, 29 DCR 765; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138; Mar. 15, 1985, D.C. Law 5-176, § 12(b), 32 DCR 748; Sept. 27, 1985, D.C. Law 6-38, § 3, 32 DCR 4307; Feb. 28, 1987, D.C. Law 6-194, § 3, 34 DCR 479; Sept. 29, 1988, D.C. Law 7-155, § 2, 35 DCR 5718; Aug. 17, 1991, D.C. Law 9-30, § 4(b), 38 DCR 4215; Sept. 20, 1995, D.C. Law 11-48, § 5, 42 DCR 3627; May 24, 1996, D.C. Law 11-124, § 2, 43 DCR 1546.)

Cross references. — As to unapplicability of Alcoholic Beverage Control Act, see § 25-127.

As to driver education program in public schools, see § 31-2212.

As to vehicle registration fees, see § 40-104.

As to licensing of motor vehicles, see § 40-106.

As to prosecutions for violations of this chapter, see § 40-703.

As to rules and regulations concerning motor vehicles, see § 40-703.

As to authority of Metropolitan Police under this chapter, see § 40-703.

Section references. — This section is referred to in §§ 25-127, 40-301.1, 40-303 and 40-612.

Effect of amendments. — D.C. Law 11-124 substituted “a fee of \$15, issue a learner’s permit, valid for a period of 6 months” for “a fee of \$10, issue a learner’s permit, valid for a period of 60 days” in (a)(2).

Legislative history of Law 1-110. — Law 1-110 was introduced in Council and assigned Bill No. 1-255, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 23, 1976 and December 7, 1976, respectively. Signed by the Mayor on January 5, 1976, it was assigned Act No. 1-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-133. — Law 1-133 was introduced in Council and assigned Bill No. 1-11, which was referred to the Committee on Transportation and Environmental Affairs, the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on October 12, 1976 and November 23, 1976, respectively. Signed by the Mayor on February 14, 1977, it was assigned Act No. 1-230 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-104. — Law 2-104 was introduced in Council and assigned Bill No. 2-195, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-215 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-36. — Law 4-36 was introduced in Council and assigned Bill No. 4-248, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-63 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-97. — Law 4-97 was introduced in Council and assigned

Bill No. 4-337, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on January 12, 1982, and January 26, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-155 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-145. — Law 4-145 was introduced in Council and assigned Bill No. 4-389, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-213 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-176. — Law 5-176 was introduced in Council and assigned Bill No. 5-382, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-38. — Law 6-38 was introduced in Council and assigned Bill No. 6-12, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 11, 1985, and June 25, 1985, respectively. Signed by the Mayor on July 11, 1985, it was assigned Act No. 6-56 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-194. — Law 6-194 was introduced in Council and assigned Bill No. 6-467, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 18, 1986 and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-252 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-155. — Law 7-155 was introduced in Council and assigned Bill No. 7-414, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on July 15, 1988, it was assigned Act No. 7-210 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-19. — Law 9-19, the “Omnibus Budget Support Temporary Act of 1991,” was introduced in Council and assigned Bill No. 9-205. The Bill was adopted on first and second readings on May 7, 1991, and June 4, 1991, respectively. Signed by the Mayor on June 21, 1991, it was assigned Act

No. 9-43 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-30. — Law 9-30, the “District of Columbia Motor Vehicle Services Fees Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-163, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-57 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-48. — Law 11-48, the “Juvenile Curfew Act of 1995,” was introduced in Council and assigned Bill No. 11-25, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 1995, and June 20, 1995, respectively. Signed by the Mayor on July 6, 1995, it was assigned Act No. 11-90 and transmitted to both Houses of Congress for its review. D.C. Law 11-48 became effective on September 20, 1995.

Legislative history of Law 11-124. — Law 11-124, the “Learner’s Permit Amendment Act of 1996,” was introduced in Council and Assigned Bill No. 11-292, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on February 6, 1996, and March 5, 1996, respectively. Signed by the Mayor on March 15, 1996, it was assigned Act No. 11-231 and transmitted to both Houses of Congress for its review. D. C. Law 11-124 became effective on May 24, 1996.

Delegation of authority pursuant to D.C. Law 6-194, “District of Columbia Anatomical Gift Amendment Act of 1986.” — See Mayor’s Order 88-49, February 25, 1988.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Department of Vehicles and Traffic abolished. — See note to § 40-703.

Definitions applicable. — For definitions applicable in this chapter, see § 40-702.

D.C. Law 11-48 held unconstitutional. — The Juvenile Curfew Act of 1995, which added subsection (g) of this section, held unconstitutional.

Permit required when driving anywhere in District, not just when on its public highways. — Although the prohibition against driving an unregistered vehicle applies only if the vehicle is operated “upon any public highway of the District of Columbia,” one may not drive a car without an operator’s permit or learner’s permit anywhere in the District of Columbia. *United States v. Botts*, 110 WLR 1257 (Super. Ct. 1982).

“Operating.” — “Operating” in this context means being in actual physical control of the vehicle, capable of putting the vehicle into movement or preventing its movement. *Taylor v. United States*, App. D.C., 662 A.2d 1368 (1995).

“Operate” includes pushing automobile. — In view of paragraph (10) of § 40-101 defining terms “operate” and “operated” to include operating, moving, standing, or parking any motor vehicle or trailer on public highway, a defendant, who had no operator’s permit and who was manually pushing automobile along the highway and controlling its direction by reaching through an open window and manipulating the steering wheel was guilty of violating this section. *Richardson v. District of Columbia*, App. D.C., 134 A.2d 492 (1957).

Person found sitting behind steering wheel of automobile at point of collision is operating such vehicle within the meaning of this section. *Taylor v. United States*, App. D.C., 259 A.2d 835 (1969).

Automobiles on private property. — Arrest of defendant who was found sitting behind the wheel of a car with a broken steering wheel which was parked in a private parking lot was statutorily authorized, notwithstanding the parking lot’s status as private property. *Taylor v. United States*, App. D.C., 662 A.2d 1368 (1995).

There is no exception in favor of postal vehicle operators and the manifest purpose of this section does not imply such an exception. *White v. District of Columbia*, 4 F.2d 163 (D.C. Cir. 1925).

Change of residence. — A person does not cease to be a legal resident of 1 jurisdiction for automobile operator’s permit purposes by merely forming an intention of moving to another jurisdiction in which such person has never resided. *Bush v. District of Columbia*, App. D.C., 78 A.2d 234 (1951).

Spot check for valid license not unreasonable. — A routine spot check of a motorist

to ascertain if he has complied with requirement of possession of valid operator's permit is neither unreasonable nor invalid, provided such check is not used as a substitute for search for evidence of some possible crime unrelated to possession of operator's permit. *Mincy v. District of Columbia*, App. D.C., 218 A.2d 507 (1966).

Actions of police officers in stopping automobile driven by defendant, who had prior narcotics offender record, to check whether he had a valid driver's permit was authorized as routine police traffic investigation, and did not constitute an arrest. *Williams v. United States*, App. D.C., 263 A.2d 659 (1970).

Stopping motorist to ascertain whether he possessed valid operator's permit was routine interrogation and not arrest. *Mincy v. District of Columbia*, App. D.C., 218 A.2d 507 (1966).

Arrest of motorist stopped for routine operator's permit check did not occur until motorist failed to exhibit his operator's permit and admitted that it had been revoked. *Mincy v. District of Columbia*, App. D.C., 218 A.2d 507 (1966).

Once defendant denied possession of license, police appropriately ordered him out of car, since driving without a valid operator's permit is a traffic offense for which he could have been arrested. *Little v. United States*, App. D.C., 393 A.2d 94 (1978).

Offense of failure to exhibit operator's permit could not be upheld where it was directly traceable to illegal stopping in District of Columbia by Maryland State Police officer and subsequent illegal arrest by the United States Park Police officer, even though committed within officer's presence. *District of Columbia v. Perry*, App. D.C., 215 A.2d 845 (1965).

The law of Maryland, which was the place of the actionable wrong, governed in determining liability of mother who signed application for minor's driver's license from District of Columbia. *Tsoy v. MacFarland*, 219 F. Supp. 220 (D. Md. 1963).

Choice of laws in determining liability. — In a personal injury action which arose from automobile accident occurring in Virginia but which was brought in Federal District Court in District of Columbia where defendants resided, if the court was unable to determine from Virginia decisions the standard of conduct to be required of the parties, District of Columbia law would be referred to to determine such standard. *Boland v. Love*, 222 F.2d 27 (D.C. Cir. 1955).

Application of Maryland statute on liability for minor's negligence. — The Maryland statute imputing the motor vehicle negligence of a minor to the person who signed his application for an operator's permit applies

only to one signing an application for a Maryland permit. *Tsoy v. MacFarland*, 219 F. Supp. 220 (D. Md. 1963).

License subject to restriction of wearing glasses. — A driver whose operator's license was subject to the restriction that he wear glasses and who operated automobile without glasses was guilty of operating automobile contrary to restricted license notwithstanding his own medical examination showing that such glasses were no longer necessary. *Reis v. District of Columbia*, App. D.C., 230 A.2d 487 (1967).

Discussion of warrantless arrest for driving without permit, see *District of Columbia v. Schram*, 112 WLR 165 (Super. Ct. 1984).

Search of defendant's person after arrest for driving without a permit was not unlawful. *Spencer v. United States*, App. D.C., 316 A.2d 331 (1974).

Opportunity to post collateral. — Informing a person arrested, for the petty offense of driving with a learner's permit while unaccompanied by a licensed driver, of his option to post collateral and giving him an opportunity to exercise that option is a necessary condition to a thorough and complete search that is conducted only as incident to needs of stationhouse detention. *United States v. Mills*, 472 F.2d 1231 (D.C. Cir. 1972).

Probable cause for arrest where automobile ownership not verified. — Where, after being stopped for having run a stop sign, a defendant was unable to furnish officers with either a driver's permit or vehicle registration and police were unable to verify ownership by other means because of computer malfunction, police had probable cause to believe that vehicle was being used without authorization and to arrest defendant on that basis. *Botts v. United States*, App. D.C., 310 A.2d 237 (1973).

Probable cause for arrest of person found sitting behind steering wheel of automobile in private parking lot. — Officers had probable cause to arrest defendant who was found sitting behind the wheel of a car with a broken steering wheel which was parked in a private parking lot, even though he was not required under D.C. law to have a driver's license in order to sit behind the steering wheel of a car in a private parking space. *Taylor v. United States*, App. D.C., 662 A.2d 1368 (1995).

Denial of application for restoration of license. — Denial of the application of a petitioner, who had accumulated 17 points for traffic violations, for restoration of his operator's permit was not an abuse of discretion. *Thalis v. England*, App. D.C., 193 A.2d 855 (1963).

Penalty for violation not excessive. — A fine of \$275 with commitment to jail for 60 days on default of payment for violation of this

section was not excessive. *Dorsey v. Peak*, 24 F.2d 892 (D.C. Cir. 1928).

Cited in *Croson v. District of Columbia*, 2 F.2d 924 (D.C. Cir. 1925); *Chesevoir v. District of Columbia*, 29 F.2d 798 (D.C. Cir. 1929); *La Forest v. Board of Comm'rs*, 92 F.2d 547 (D.C. Cir.), cert. denied, 302 U.S. 760, 58 S. Ct. 367, 82 L. Ed. 588 (1937); *Penwell v. District of Columbia*, App. D.C., 31 A.2d 891 (1943); *Bush v. District of Columbia*, App. D.C., 78 A.2d 234 (1951); *Moore v. United States*, 344 F.2d 558 (D.C. Cir. 1965); *Martin v. United States*, App. D.C., 283 A.2d 448 (1971); *United States v.*

Mills, 472 F.2d 1231 (D.C. Cir. 1972); *Banks v. United States*, App. D.C., 287 A.2d 85 (1972); *United States v. Montgomery*, 561 F.2d 875 (D.C. Cir. 1977); *Jacobs v. United States*, App. D.C., 374 A.2d 850 (1977); *Punch v. United States*, App. D.C., 377 A.2d 1353 (1977), cert. denied, 435 U.S. 955, 98 S. Ct. 1586, 55 L. Ed. 2d 806 (1978); *United States v. Foster*, 566 F. Supp. 1403 (D.D.C. 1983); *District of Columbia v. McConnell*, App. D.C., 464 A.2d 126 (1983); *United States v. Simpson*, 119 WLR 1229 (Super. Ct. 1991).

§ 40-301.1. Driver Education Program Fund.

(a) The Mayor of the District of Columbia shall establish a trust fund pursuant to § 47-373(2)(H) to be known as the "Driver Education Program Fund".

(b) Five dollars of the fee received for each motor vehicle operator's permit issued by the District of Columbia pursuant to § 40-301(a)(1) shall be deposited in the Driver Education Program Fund.

(c) Amounts allocated to or deposited in the Driver Education Program Fund shall be used by a District of Columbia agency, exclusively, for the purpose of providing a driver education program for students who are residents of the District of Columbia and who are enrolled in a high school.

(d) This act shall not preclude or prevent the District of Columbia government or any other individual or organization from allocating, authorizing, or appropriating any other moneys for a driver education program.

(e) Within the limits of the amount available in the Driver Education Program Fund, the Mayor shall reimburse the direct costs incurred by any District of Columbia agency which, pursuant to this section, provides driver education to high school students.

(f) If the Board of Education provides driver education to high school students during any given school semester, the Board shall be entitled to reimbursement in accordance with subsection (e) of this section; provided, that the Board has, at least 30 calendar days before the beginning of the semester, informed the Mayor of its intention to provide such instruction at specified schools, together with expected enrollment in the program, and the estimated cost.

(g) If the Board of Education does not inform the Mayor of its intention to provide a driver education program pursuant to subsection (f) of this section or inform the Mayor that it will not offer a driver education program during a particular semester, the Mayor shall designate a District of Columbia agency to provide a driver education program for the particular semester, and such agency shall be reimbursed pursuant to subsection (e) of this section. (Apr. 3, 1982, D.C. Law 4-97, § 9, 29 DCR 765.)

Cross references. — As to organization of District of Columbia fund structure, see § 47-373.

Legislative history of Law 4-97. — Law

4-97, "Motor Vehicle Services Fees and Driver Education Support Act of 1982," was introduced in Council and assigned Bill No. 4-337, which was referred to the Committee on Transporta-

tion and Environmental Affairs. The Bill was adopted on first and second readings on January 12, 1982, and January 26, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-155 and trans-

mitted to both Houses of Congress for its review.

References in text. — "This act," referred to near the beginning of subsection (d) of this section, is D.C. Law 4-97.

§ 40-302. Revocation or suspension; new permit after revocation; nonresidents; penalty for operation with revoked or suspended license.

(a) Except where for any violation of this chapter revocation of the operator's permit is mandatory, the Mayor or his designated agent may revoke or suspend an operator's permit for any cause which he or his agent may deem sufficient; provided, that in each case where a permit is revoked or suspended the reasons therefor shall be set out in the order of revocation or suspension; provided further, that such order shall take effect 5 days after its issuance unless the holder of the permit shall have filed within such period, written application with the Mayor of the District of Columbia for a review of his order or the order of his agent, and, if upon such review, the Mayor shall sustain such order, the same shall become effective immediately; provided further, that application to said Mayor for a review shall not operate as a stay of such order of the Mayor or his agent when the order has been issued revoking or suspending a permit on account of mental or physical incapacity, for driving while the individual's blood or breath contains .10 percent or more, by weight, of alcohol, or the individual's urine contains .13 percent or more, by weight, of alcohol, or while under the influence of intoxicating liquor or any drug or any combination thereof, or while the ability to operate a vehicle is impaired by the consumption of intoxicating liquor; for manslaughter when an automobile is involved, or for operating a motor vehicle equipped with a smoke screen.

(b) In case the operator's permit of any individual is revoked no new permit shall be issued to such individual for at least 6 months after the revocation except in the discretion of the Mayor or his designated agent.

(c) The Mayor of the District of Columbia, or his designated agent, may suspend or revoke the right of any nonresident person as defined in § 40-303, to operate a motor vehicle in the District of Columbia, for any cause he or his agent may deem sufficient, and the proper authority at the place of issuance of the permit, or other authority to operate a motor vehicle shall be notified of such suspension and the reason therefor, immediately; provided, that such order of suspension or revocation shall take effect 10 days after its issuance, and the same be subject to review and appeal in the manner and under the same conditions as are provided for such matters in subsection (a) of this section.

(d) Notwithstanding any other provision of this section, the provisions of the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 et seq.) and particularly those of § 1-1509, shall apply to each proceeding, decision, or other administrative action specified in this chapter.

(e) Any individual found guilty of operating a motor vehicle in the District during the period for which the individual's license is revoked or suspended, or

for which his right to operate is suspended or revoked, shall, for each such offense, be fined not to exceed \$5,000 or imprisoned for not more than 1 year, or both. (Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 13; July 3, 1926, 44 Stat. 814, ch. 739, § 3; Feb. 27, 1931, 46 Stat. 1424, 1428, ch. 317, §§ 2, 4; June 7, 1934, 48 Stat. 926, ch. 426; May 15, 1936, 49 Stat. 1273, ch. 393; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88-60, § 6; Dec. 23, 1963, 77 Stat. 617, Pub. L. 88-241, § 8; July 29, 1970, 84 Stat. 583, Pub. L. 91-358, title I, § 163(g)(1); 1973 Ed., § 40-302; Apr. 26, 1977, D.C. Law 1-133, title I, §§ 102-104, 23 DCR 9697; Sept. 14, 1982, D.C. Law 4-145, §§ 6, 7, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 12, 29 DCR 5753.)

Cross references. — As to inapplicability of Alcoholic Beverage Control Act, see § 25-127.

Section references. — This section is referred to in §§ 23-581, 25-127, 40-205, 40-301, 40-612, 40-703, and 40-720.

Legislative history of Law 1-133. — See note to § 40-301.

Legislative history of Law 4-145. — See note to § 40-301.

Legislative history of Law 4-174. — Law 4-174 was introduced in Council and assigned Bill No. 4-398, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-257 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Definitions applicable. — For definitions applicable in this chapter, see § 40-702.

Purpose of revocation procedure is not to punish offending driver but to protect public. Rickard v. District of Columbia, App. D.C., 214 A.2d 476 (1965).

Procedural due process requires that hearing be held prior to permanent suspension of driver's license. Quick v. Department of Motor Vehicles, App. D.C., 331 A.2d 319 (1975).

Subsection (a) is properly interpreted as permitting revocation or suspension only for violations of usual and reasonable traffic regulations and, so construed, did not unconstitutionally delegate legislative authority. Franklin v. District of Columbia, App. D.C., 248 A.2d 677 (1968).

Operation of automobile. — An "operator" within subsection (e) of this section, is one who is in actual physical control of a vehicle upon a public highway. Houston v. District of Columbia, App. D.C., 149 A.2d 790 (1959).

Where defendant had been seen behind the wheel manipulating the automobile's controls after a collision had occurred, such evidence supported the finding that he was the "operator" of the vehicle within the meaning of subsection (e) of this section. Jackson v. District of Columbia, App. D.C., 180 A.2d 885 (1962).

Where the defendant, whose operator's permit had been revoked, was sitting behind the steering wheel of an automobile with the motor running, the defendant was in actual physical control of automobile, capable of putting it into movement or preventing its movement, and hence "operating" the automobile within meaning of subsection (e) of this section. Houston v. District of Columbia, App. D.C., 149 A.2d 790 (1959).

Where a defendant was sitting behind the steering wheel of the vehicle, with the motor off, and there were no other actions on his part which constituted "operating" the vehicle, the defendant did, in fact, "operate" the motor vehicle in that he had the physical ability to drive the car away from the curb at any time he desired, as the keys were in the ignition. All he had to do was to turn the ignition on and pull away from the curb. The fact that his girlfriend, who owned the car, was seated in the right front passenger seat was totally immaterial. District of Columbia v. Alston, 116 WLR 2369 (Super. Ct. 1988).

Proof of physical capability of controlling a vehicle is not an element of the offense in subsection (e) of this section prohibiting operating a vehicle after suspension. *Maldonado v. District of Columbia*, App. D.C., 594 A.2d 88 (1991).

Proving “operating” does not require a witness placing appellee inside of the vehicle. Appellee’s admission that he had been driving the car, together with the facts that the appellee was observed by the police officer standing next to the vehicle urinating, the keys were in the ignition, the headlights were on, and the engine was running, was sufficient to establish a prima facie case of “operating” the motor vehicle. *District of Columbia v. Whitley*, App. D.C., 640 A.2d 710 (1994).

Proof of commission of crime is not sufficient to disqualify person from holding driver’s license. *James v. Director of Motor Vehicles*, App. D.C., 193 A.2d 209 (1963), rev’d on other grounds, 336 F.2d 745 (D.C. Cir. 1964).

Revocation continues until driving privilege restored. — Revocation of a license to drive does not expire at the same time the license itself would expire, but continues until the privilege has been restored by the revoking authority. *Rickard v. District of Columbia*, App. D.C., 214 A.2d 476 (1965).

Although suspension period has ended. — Although his operating permit would have been restored to a driver had he promptly applied for its restoration at the end of the suspension period, a driver who drove his vehicle thereafter without obtaining official restoration was guilty of driving vehicle while operating privilege was suspended. *Brown v. District of Columbia*, App. D.C., 170 A.2d 925 (1961).

Jurisdiction to suspend juvenile’s operator’s permit. — The exclusive jurisdiction in judicial proceedings conferred by Juvenile Court Act is not a jurisdictional bar to the administrative action of suspending motor vehicle operator’s permit of 17-year-old driver. *Murphy v. Heath*, 256 A.2d 421 (1969).

Point system as reasonable regulation. — A point system which provides for the assessment of points against the motorist for moving traffic violations and for suspension of the motorist’s operating permit upon accumulation of 8 points is a reasonable regulation concerning the control of traffic. *Ritch v. Director of Vehicles & Traffic*, App. D.C., 124 A.2d 301 (1956).

Review of revocation by delegated authority. — A motorist who had his operator’s permit revoked was not denied his statutory right of having his case reviewed when it was reviewed by the legally delegated authority. *Ritch v. Director of Vehicles & Traffic*, App. D.C., 124 A.2d 301 (1956).

Routine check for operator’s permit. — A motorist’s arrest for operating a motor vehicle during the period in which his operator’s per-

mit has been revoked was legal where the motorist was stopped for a routine check for operator’s permit and for no other purpose. *Mincy v. District of Columbia*, App. D.C., 218 A.2d 507 (1966).

Allowing vehicle to be operated by unlicensed individual. — Suspension of an operator’s permit is not authorized merely because the owner of a motor vehicle allows it to be operated by an individual who is not a duly licensed operator. *Mason v. Director of Motor Vehicles*, App. D.C., 186 A.2d 893 (1962).

Assessment of points for conviction outside District. — Where a driver had been convicted in Virginia of driving while under the influence of intoxicating liquors and such conviction had been certified to the District of Columbia, and where, as a result of such certification, the driver’s total points under the point system of regulation exceeded 12 thereby permitting revocation of his operator’s permit, there was no abuse of discretion in allowing points to be assessed for the conviction outside the District, since, if the incident had occurred in the District, it would have meant mandatory revocation of driver’s permit without the exercise of any discretion, without a hearing and without reference to any point system. *Council v. Director of Motor Vehicles*, App. D.C., 159 A.2d 874 (1960).

Effect of valid Virginia permit where District permit revoked. — One whose operator’s permit in the District of Columbia had been revoked was properly convicted of driving in the District during the suspension period although he had become a resident of Virginia and had obtained registration and operator’s license from that state. *District of Columbia v. Fred*, 281 U.S. 49, 50 S. Ct. 163, 74 L. Ed. 694 (1930).

Even where the period between the revocation of his operator’s permit and the apprehension of a driver was more than the 3-year period for which District of Columbia operator’s permits were validly issued, a driver who had become a resident of Virginia and had a Virginia operator’s permit could not lawfully operate a motor vehicle in the District under the reciprocal benefits conferred on nonresident motorists. *Rickard v. District of Columbia*, App. D.C., 214 A.2d 476 (1965).

Where the defendant’s automobile operator’s permit was revoked in the District of Columbia, his residence in Virginia and possession of a valid Virginia operator’s permit did not bar his conviction for driving in the District of Columbia while his permit was revoked there, notwithstanding the reciprocal benefits conferred on nonresident operators. *Hicks v. District of Columbia*, App. D.C., 217 A.2d 309 (1966).

Revocation based on flagrant disregard for safety. — A traffic hearing officer did not exceed his authority in revoking operator’s per-

mit of a motorist convicted of speeding in a school zone even though under the point system used in the District, only 3 points could be assessed for such a violation, since notwithstanding such point system, revocation of an operator's permit was authorized when, following a lawful hearing, it is concluded that a motorist drove in such a manner as to show a flagrant disregard for the safety of persons or property. *Tillman v. Director of Vehicles & Traffic*, App. D.C., 144 A.2d 922 (1958).

Regulations extend to vehicle on public sidewalk. — Where an automobile was parked on a sidewalk and the defendant, whose operator's permit had been revoked, was sitting behind the steering wheel with the motor running, his conviction for operating a motor vehicle during the permit revocation period was not invalid on the ground that traffic statutes and regulations were directed at operation of motor vehicles on public highways since a public sidewalk is a part of the public highway. *Houston v. District of Columbia*, App. D.C., 149 A.2d 790 (1959).

Regulations must relate to traffic safety rules. — Any regulation authorizing suspension must have a direct relationship to traffic control rules designed to promote the safety of persons or property in order to justify suspension or revocation of an operator's permit. *Reynolds v. District of Columbia*, App. D.C., 614 A.2d 1285 (1992).

Notice requirement for license suspension hearing satisfied. — Although a motorist's spouse received and signed the return receipt for notice of a license suspension hearing for the motorist, and allegedly never told the motorist of this, the requirement of notice was satisfied where the jury found that the motorist was aware of the notice of the license suspension hearing. *Foster v. District of Columbia*, App. D.C., 497 A.2d 100 (1985).

Collateral attack on decision sustaining license suspension. — When a motorist fails to pursue administrative remedies contesting license suspension, the hearing examiner's decision sustaining the motorist's license suspension becomes final and may not be attacked collaterally during a prosecution for driving while the license was suspended. *Foster v. District of Columbia*, App. D.C., 497 A.2d 100 (1985).

Remand where revocation based on unclear evidence. — Where the hearing officer at a license revocation hearing had not examined the laboratory urinalysis report which a police officer, at earlier suspension hearing, had testified showed "zero-two-one, ethyl alcohol," and record did not contain the report so that it was not clear whether witness meant .021 or 0.21, officer's testimony concerning the urinalysis should not have been accorded any probative weight and, inasmuch as hearing officer expressly relied upon that testimony in revoking driver's license, revocation order must be reversed and case remanded for new hearing. *Reap v. Department of Motor Vehicles*, App. D.C., 305 A.2d 513 (1973).

Cited in *Chesevoir v. District of Columbia*, 29 F.2d 798 (D.C. Cir. 1929); *Lambert v. Board of Comm'rs*, App. D.C., 116 A.2d 926 (1955); *Mathews v. District of Columbia*, App. D.C., 134 A.2d 650 (1957); *Oliver v. Silver*, App. D.C., 155 A.2d 719 (1959); *United States v. Weston*, 466 F.2d 435 (D.C. Cir. 1972); *United States v. Robinson*, 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973); *United States v. Simmons*, App. D.C., 302 A.2d 728 (1973); *York v. District of Columbia*, App. D.C., 407 A.2d 695 (1979); *Johnson v. Cumis Ins. Soc'y, Inc.*, 624 F. Supp. 1170 (D.D.C. 1986); *Stowell v. District of Columbia Dep't of Transp.*, App. D.C., 514 A.2d 438 (1986); *McMillan v. United States*, App. D.C., 527 A.2d 739 (1987); *Dailey v. District of Columbia*, App. D.C., 554 A.2d 339 (1989).

§ 40-302.1. Revocation of motor vehicle operator's permit.

(a) The Mayor shall revoke, in the absence of compelling circumstances warranting an exception, the motor vehicle operator's permit of a District resident or the privilege to operate a motor vehicle in the District of a nonresident, convicted as a result of the commission of a drug offense or adjudicated a juvenile delinquent as a result of the commission of a drug offense. Where the person is imprisoned as a result of the drug offense, the revocation shall occur following the person's release from imprisonment. If a person does not have an operator's permit, or the permit is or has been revoked or suspended at the time of the conviction of a drug offense, the issuance or reinstatement of an operator's permit will be delayed for a period of at least 6 months and not more than 2 years. If a person is convicted for the commission of a drug offense or adjudicated a delinquent for the commission of a drug offense before the person is 16 years of age, the period of disqualification shall

not begin to run until the person is 16 years of age. A copy of the conviction or adjudication shall be forwarded by the court to the Mayor. The revocation shall be for not less than six months and not more than 2 years.

(b) For the purposes of this section, the term “drug offense” means:

(1) The possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 801 *et seq.*), Chapter 5 of Title 33, or the law of any state, territory, or possession of the United States; or

(2) The operation of a motor vehicle under the influence of such a substance. (Mar. 3, 1925, ch. 443, § 13a, as added Mar. 16, 1989, D.C. Law 7-222, § 2, 36 DCR 570; Mar. 25, 1993, D.C. Law 9-253, § 2, 40 DCR 790.)

Legislative history of Law 7-222. — Law 7-222, “Motor’s Vehicle Operator’s Permit Revocation Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-489, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-297 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-253. — Law 9-253, the “Drug User’s Automobile Forfeiture Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-154, which was

referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-399 and transmitted to both Houses of Congress for its review. D.C. Law 9-253 became effective on March 25, 1993.

No effect on jury trial requirements. — Potential loss of a driver’s license for one convicted of a misdemeanor drug offense carrying a maximum penalty of six months imprisonment does not transform a petty offense into a serious offense requiring jury trial. *Young v. United States*, App. D.C., 678 A.2d 570 (1996).

§ 40-302.2. Suspension of minor’s motor vehicle operator’s permit for alcohol violation.

(a) The Mayor shall suspend the motor vehicle operator’s permit of a person under 21 years of age convicted of violating, or adjudicated in violation of, § 25-130. The suspension shall be for the duration required by § 25-130. A copy of the conviction or adjudication shall be forwarded to the Mayor by the court or the administrative body authorized to adjudicate violations under Chapter 1 of Title 25.

(b) Any person found guilty of operating a motor vehicle in the District during the period for which the person’s license or privilege is suspended, shall, for each offense, be fined not more than \$1,000, imprisoned for not more than 180 days, or both. (Mar. 3, 1925, ch. 443, § 13b, as added May 24, 1994, D.C. Law 10-122, § 4, 41 DCR 1658.)

Legislative history of Law 10-122. — Law 10-122, the “Alcoholic Beverage Control Act and Rules Reform Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-207, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings

on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 21, 1994, it was assigned Act No. 10-214 and transmitted to both Houses of Congress for its review. D.C. Law 10-122 became effective on May 24, 1994.

§ 40-303. Exemptions.

(a) The owner or operator of any motor vehicle who is not a legal resident of the District of Columbia, and who has complied with the laws of any state, territory, or possession of the United States, or of a foreign country or political subdivision thereof, shall, subject to the provisions of this section, be exempt for a continuous 30 day period immediately following the entrance of such owner or operator into the District of Columbia from compliance with §§ 40-102 and 40-301.

(b) Upon expiration of the 30 day exemption period, the owner or operator of any motor vehicle shall be required either:

(1) To comply with the provisions of §§ 40-102, 40-301 and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia; or

(2) To purchase, from the Mayor or his designated agent, a reciprocity sticker which shall be valid 180 days from the date of its issuance if the owner or operator has complied with the motor vehicle registration and licensing laws of the state, territory, or possession of the United States, or of a foreign country or political subdivision thereof, of which the owner or operator is a legal resident and the owner or operator is not a legal resident of the District of Columbia. Upon expiration of the reciprocity sticker, the owner or operator who continues to reside in the District of Columbia shall be required to comply with §§ 40-102, 40-301 and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia.

(c) The following persons shall, if they have complied with the motor vehicle registration and licensing laws of the state, territory, or possession of the United States of which they are a legal resident, be exempt during their respective term of office or employment from compliance with § 40-102, § 40-301, and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia:

(1) Senators, Representatives, and Delegates of the United States Congress;

(2) Personal employees of Senators, Representatives, and Delegates of the United States Congress who are legal residents of the state, territory, or possession from which said Senators, Representatives, and Delegates have been elected or appointed. Personal employees include only those individuals who work directly and specifically for a Senator, Representative, or Delegate of the United States Congress and does not include those staff members considered committee or patronage staff;

(3) The President and Vice-President of the United States; and

(4) Officers of the executive branch of the United States government who are not domiciled within the District of Columbia, whose appointment to the

office held by them was by the President of the United States, subject to confirmation by the Senate, and whose tenure of office is at the pleasure of the President.

(d) Those persons listed under subsection (c) of this section shall be required to obtain and display a valid reciprocity sticker. The Mayor shall issue, upon application and without a fee, a reciprocity sticker for those persons listed under subsection (c) of this section, valid for 1 year, and renewable for the respective term of office or employment.

(e) Persons enrolled as full-time students engaged in higher education (as defined by the respective institutions of higher education in the District of Columbia) in an institution of higher education licensed to operate in the District of Columbia, and who are not residents of the District of Columbia, shall, if they have complied with the motor vehicle registration and licensing laws of the state, territory, or possession of the United States of which they are a legal resident, be exempt during their respective tenure as full-time students engaged in higher education from compliance with § 40-102, § 40-301, and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia; provided, that the full-time student shall be required to obtain and display a valid reciprocity sticker.

(1) A full-time student shall be required to submit proof, as required by the Mayor, that the student is a full-time student and is in compliance with this subsection.

(2) The Mayor shall issue, upon application and for a \$250 fee, a reciprocity sticker to full-time students who comply with this section. Such sticker shall be valid for 1 year. A full-time student while enrolled in an institution of higher education in the District of Columbia and while in compliance with this subsection shall be able to obtain successive reciprocity stickers, each valid for 1 year and each for a fee of \$250.

(3) A full-time student who is a resident of the District of Columbia, who is registered to vote in the District of Columbia, who is employed for more than 20 hours a week, whose address for the purpose of paying tuition for higher education is in the District of Columbia, whose parent or parents domicile in the District of Columbia or whose parents are divorced or separated and the custodial parent domiciles in the District of Columbia, whose student loan is from a bank or savings and loan in the District of Columbia, or who fulfills any criteria promulgated by the Mayor of the District of Columbia shall be required to comply with § 40-102, § 40-301, and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia.

(4) Notwithstanding any other law, this subsection shall not apply to full-time students who reside within the boundaries of Advisory Neighborhood Commissions 2A and 2E.

(f) Repealed.

(g) The Mayor or his designated agent is authorized to enter into reciprocal agreements or arrangements with the duly authorized representatives of a

state, territory, or possession of the United States or a foreign country or political subdivision thereof, to vary the conditions under which the validity of motor vehicle registration and identification tags of any category of vehicles such as dealer tags, handicapped tags, and rental vehicle tags of such state, territory, or possession of the United States or foreign country or political subdivision thereof, shall be recognized in the District of Columbia.

(h) The Mayor of the District of Columbia shall promulgate such rules and regulations as are necessary to implement and enforce this section. Such rules and regulations shall include, but not be limited to, a determination of how many times during the 30-day exemption period an agent or employee of the Mayor of the District of Columbia must observe a motor vehicle for purposes of the enforcement of this section and a method of enforcing the provisions of this section applicable to commercial vehicles.

(i) Any operator of a motor vehicle who is not a legal resident of the District of Columbia and who does not have in his immediate possession an operator's permit issued by a state, territory, or possession of the United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless: (1) the laws of the state, territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit; or (2) has submitted to examination within 72 hours after entering the District and obtained an operator's permit in accordance with the provisions of § 40-301. Any individual who violates any provision of this subsection shall, upon conviction thereof, be fined not less than \$5 nor more than \$50 or imprisoned not less than 30 days, or both. (Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 8; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2; Aug. 16, 1954, 68 Stat. 733, ch. 741, § 6; 1973 Ed., § 40-303; Apr. 6, 1978, D.C. Law 2-69, § 5, 24 DCR 6800; Mar. 16, 1982, D.C. Law 4-80, § 2, 29 DCR 149; July 1, 1982, D.C. Law 4-122, § 2, 29 DCR 2080; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138; Aug. 2, 1983, D.C. Law 5-24, § 9, 30 DCR 3341; Apr. 9, 1997, D.C. Law 11-198, § 506, 43 DCR 4569; Sept. 5, 1997, D.C. Law 12-14, § 8, 44 DCR 3620.)

Cross references. — As to inapplicability of Alcoholic Beverage Control Act, see § 25-127.

Section references. — This section is referred to in §§ 25-127, 40-102, 40-105, 40-301, 40-302.

Effect of amendments. — D.C. Law 11-198 substituted "\$250" for "\$25" twice in (e)(2); and added (e)(4).

Section 8 of D.C. Law 12-14 repealed (f).

Temporary amendments of section. — Section 8 of D.C. Law 11-189 repealed (f).

Section 10(b) of D.C. Law 11-189 provided that the act shall expire on the 225th day of its having taken effect or on the effective date of the International Registration Plan Agreement Act of 1996, whichever occurs first.

Section 506 of D.C. Law 11-226 provided that beginning October 1, 1996, subsection (c) of this section shall not apply to full-time students

who reside within the boundaries of Advisory Neighborhood Commissions 2A and 2E.

Section 1001 of D.C. Law 11-226 provides that Titles I, II, III, V, and VI of the act shall apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 8 of the International Registration Plan Agreement Emergency Act of 1996 (D.C. Act 11-291, July 9, 1996, 43 DCR 4152), § 8 of the International Registration Plan Agreement Congressional Review Emergency Act of 1996 (D.C. Act 11-401, October 9, 1996, 43 DCR 5702), § 8 of the International Registration Plan Agreement

Second Congressional Review Emergency Act of 1996 (D.C. Act 11-465, December 30, 1996, 44 DCR 161) and, § 8 of the International Registration Plan Agreement Congressional Review Emergency Act of 1997 (D.C. Act 12-17, March 3, 1997, 44 DCR 1756).

For temporary inapplicability of subsection (e) of this section to full-time students who reside within the boundaries of Advisory Neighborhood Commissions 2A and 2E, see § 506 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 506 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 506 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 11-302 provides for application of the act.

Section 1001 of D.C. Act 11-429 provides for application of the act.

Section 10 of D.C. Act 12-17 provides for the application of the act.

Section 1001 of D.C. Act 12-2 provides for application of the act.

Legislative history of Law 2-69. — Law 2-69 was introduced in Council and assigned Bill No. 2-99, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first, amended first, second and final readings on July 26, 1977, September 13, 1977, October 11, 1977 and October 25, 1977, respectively. Signed by the Mayor on January 27, 1978, it was assigned Act No. 2-135 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-80. — Law 4-80 was introduced in Council and assigned Bill No. 4-292, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 24, 1981, and December 8, 1981, respectively. Signed by the Mayor on December 21, 1981, it was assigned Act No. 4-134 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-122. — Law 4-122 was introduced in Council and assigned Bill No. 4-419, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on April 6, 1982, and April 27, 1982, respectively. Signed by the Mayor on May 11, 1982, it was assigned Act No. 4-187 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-145. — See note to § 40-717.1.

Legislative history of Law 5-24. — Law 5-24 was introduced in Council and assigned Bill No. 5-169, which was referred to the Com-

mittee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-189. — Law 11-189, the "International Registration Plan Agreement Temporary Act of 1996," was introduced in Council and assigned Bill No. 11-724. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-342 and transmitted to both Houses of Congress for its review. D.C. Law 11-189 became effective April 9, 1997.

Legislative history of Law 11-198. — Law 11-198, the "Fiscal Year 1997 Budget Support Act of 1996," was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective April 9, 1997.

Legislative history of Law 11-226. — Law 11-226, the "Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-896. The Bill was adopted on first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on November 27, 1996, it was assigned Act No. 11-453 and transmitted to both Houses of Congress for its review. D.C. Law 11-226 became effective on April 9, 1997.

Legislative history of Law 12-14. — See note to § 40-121.

Application of Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Definitions applicable. — For definitions applicable in this chapter, see § 40-702.

Proof of nonresident's exemption. — The exception of a motorist not residing in the District and complying with the automobile registration and driver's license laws of a state from the statutory prohibition against operation of an automobile in the District without a District operator's permit is a defense and not part of description of offense, and District law enforcement officers are not required to prove that motorist is not within exception but motorist must prove facts establishing that motorist is within exception. *Bush v. District of Columbia*, App. D.C., 78 A.2d 234 (1951).

Change of residence. — A person does not cease to be a legal resident of one jurisdiction for automobile operator's permit purposes by merely forming an intention of moving to an-

other jurisdiction in which such person has never resided. *Bush v. District of Columbia*, App. D.C., 78 A.2d 234 (1951).

No exemption for nonresident whose District permit was revoked. — This section does not exempt a nonresident from compliance with the laws of the District of Columbia when, while a resident of the District, his driver's permit was revoked under § 40-302 and he is subject to punishment under that section. *District of Columbia v. Fred*, 281 U.S. 49, 50 S. Ct. 163, 74 L. Ed. 694 (1930).

A driver whose operator's permit was revoked by the District of Columbia and who moved to Virginia and obtained a valid resident operator's permit did not have the privilege to operate a motor vehicle in the District under the reciprocal benefits conferred upon nonresident operators by this section. *Rickard v. Dis-*

trict of Columbia, App. D.C., 214 A.2d 476 (1965).

Where a defendant's automobile operator's permit was revoked in the District of Columbia, his residence in Virginia and possession of a valid Virginia operator's permit did not bar his conviction for driving in the District of Columbia while his permit was revoked there, notwithstanding the reciprocal benefits conferred on nonresident operators by this section. *Hicks v. District of Columbia*, App. D.C., 217 A.2d 309 (1966).

Cited in *Capital Transit Co. v. District of Columbia*, 225 F.2d 38 (D.C. Cir. 1955); *Burt v. Cordover*, App. D.C., 117 A.2d 116 (1955); *Russell v. United States*, App. D.C., 687 A.2d 213 (1997); *Scolaro v. District of Columbia Bd. of Elections & Ethics*, App. D.C., 691 A.2d 77 (1997).

CHAPTER 4. MOTOR VEHICLE SAFETY RESPONSIBILITY.

Subchapter I. General Provisions.

- Sec.
 40-401. Short title.
 40-402. Definitions.
 40-403. Administration.
 40-404. Review by Mayor.
 40-405. Abstract of operating record.
 40-406. Information regarding financial responsibility to be furnished person injured.
 40-407. Service of process on nonresident.
 40-408. Operator deemed to be agent of owner.
 40-409 to 40-433. [Repealed].
 40-434. Persons required to deposit proof of future responsibility.
 40-435. "Proof of financial responsibility for the future", "proof", or "proof of financial responsibility" defined.
 40-436. "Judgment" and "state" defined.
 40-437. Suspension of license and registration for certain convictions; effect of proof of financial responsibility; vehicles owned or leased by the United States, a state, or a political subdivision thereof; suspension for foreign convictions.
 40-438. Duration of suspension.
 40-439. Suspension of unlicensed or licensed person after certain convictions; proof of financial responsibility required; certificate of conviction to be forwarded to Mayor.
 40-440. Suspension of nonresidents' operating privilege; duration.
 40-441. Report by courts of nonpayment of judgments.
 40-442. Judgment against a nonresident — Transmittal of copy to license and registration official of defendant's state.
 40-443. Same — Suspension for nonpayment.
 40-444. Government vehicles; exception as to nonpayment of judgment provisions.
 40-445. Consent by judgment creditor to retention of license, registration, or operating privileges by judgment debtor.
 40-446. Effect of Mayor's finding that insurer obligated to pay judgment.
 40-447. Continuance of suspension until judgment paid and proof given.
 40-448. Discharge in bankruptcy.
 40-449. Required payments; amounts; settlements.
 40-450. Installment payment of judgments — Permitted.

- Sec.
 40-451. Same — Default.
 40-452. Proof required for each registered vehicle.
 40-453. Alternate methods of giving proof.
 40-454. Certificate of insurance as proof.
 40-455. Certificate filed by nonresident as proof of financial responsibility.
 40-456. Default by nonresident insurance carrier.
 40-457, 40-458. [Repealed].
 40-459. Provisions of subchapter not to affect other policies.
 40-460 to 40-464. [Repealed].
 40-465. Owner of a motor vehicle may give proof for others.
 40-466. Substitution of proof.
 40-467. Requirement of other proof of financial responsibility; prior proof; suspension.
 40-468. Cancellation of certificate; waiver of filing proof.
 40-469. Transfer of registration to defeat purpose of subchapter.
 40-470. Surrender of license and registration.
 40-471, 40-472. [Repealed].
 40-473. [Repealed].
 40-474. Failure to return license or registration; penalty.
 40-475. Penalty for violations of subchapter.
 40-476. Jurisdiction of the Superior Court of the District of Columbia as to prosecutions for violations of provisions of subchapter.
 40-477. [Repealed].
 40-478. Self-insurers.
 40-479. Appropriations authorized.
 40-480. Subchapter not applied retroactively.
 40-481. Provisions of subchapter not to prevent other processes provided by law.
 40-482. Interpretation of subchapter.
 40-483. Effect of Reorganization Plan No. 5 of 1952.
 40-484. Severability of provisions.
 40-485. Effect of subchapter on prior law.

Subchapter II. Senior Citizen Motor Vehicle Accident Prevention Course Certification.

- 40-491. Findings.
 40-492. Approval of courses; certificate of completion.
 40-493. Insurance discounts.

Subchapter III. Vehicle Cover Requirements.

- 40-499.1. Vehicle cover requirement; penalty.

*Subchapter I. General Provisions.***§ 40-401. Short title.**

This subchapter may be cited as the “Motor Vehicle Safety Responsibility Act of the District of Columbia.” (May 25, 1954, 68 Stat. 120, ch. 222, § 1; 1973 Ed., § 40-417.)

Cross references. — As to motor vehicle insurance requirements, see § 35-2103.

Editor’s notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, “subchapter” has been substituted for “chapter” in this section.

Purpose of subchapter. — This subchapter is a remedial statute designed to protect, so far as possible, innocent persons injured by negligent operation of motor vehicles. *Government Employees Ins. Co. v. Stonewall Cas. Co.*, App. D.C., 301 A.2d 72 (1973).

Reasonable requisites and contingencies permitted in licensing. — Congress may surround its grant of authority for issuance and retraction of driver’s licenses in the District with reasonable requisites and contingencies. *Cheek v. Washington*, 311 F. Supp. 965 (D.D.C. 1970).

Cited in *National Union Fire Ins. Co. v. Binker*, 665 F. Supp. 35 (D.D.C. 1987); *Edens v. Musolino*, 731 F. Supp. 533 (D.D.C. 1990); *Bulin v. Stein*, App. D.C., 668 A.2d 810 (1995).

§ 40-402. Definitions.

The following words and phrases used in this subchapter shall, for the purpose of this subchapter, have the meanings respectively ascribed to them in this article except in those instances where the context clearly indicates a different meaning:

(1) “Mayor” means the Mayor of the District of Columbia, or his designated agent or agents.

(2) “Driver” or “operator” means every person who drives or is in actual physical control of a motor vehicle upon a public highway or who is exercising control over or steering a vehicle being pushed or towed by a motor vehicle upon a public highway.

(3) “License” means any operator’s permit or any other license or permit to operate a motor vehicle issued under the laws of the District of Columbia including:

(A) Any temporary or learner’s permit;

(B) The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

(C) Any nonresident’s operating privilege as defined herein.

(4) “Motor vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The term “motor vehicle” shall not include battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.

(5) “Nonresident” means every person who is not a resident of the District of Columbia.

(6) “Nonresident’s operating privilege” means the privilege conferred upon a nonresident by the laws of the District of Columbia pertaining to the

operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in the District of Columbia.

(7) "Owner" means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this subchapter.

(8) "Person" means every natural person, firm, copartnership, association, or corporation.

(9) "Public highway" means any street, road, or public thoroughfare.

(10) "Registration" means the registration plates issued under the laws of the District of Columbia pertaining to the registration of vehicles.

(11) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks. (May 25, 1954, 68 Stat. 120, ch. 222, § 2; 1973 Ed., § 40-418; Mar. 15, 1985, D.C. Law 5-176, § 7, 32 DCR 748.)

Legislative history of Law 5-176. — See note to § 40-208.

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Applicability. — This Act does not impose liability on one having naked legal title with no immediate right to control use of the car. *DeLawder v. Keystone Ins. Co.*, 122 WLR 493 (Super. Ct. 1994).

Determination of ownership. — To determine the ownership of an automobile for purpose of applying this subchapter, it is necessary to look to the purpose of the statute, namely, to place liability upon the person in a position immediately to allow or prevent use of vehicle and to do so by giving lawful and effective consent or prohibition as to its operation by others. *Johnson v. Keyes*, App. D.C., 201 A.2d 24 (1964).

Titleholder liable as "owner" of truck rented on short-term basis. — Titleholder of rented truck, which was driven by a short-term lessee, was held liable under this Act as the "owner" of the truck, which struck plaintiff's legally parked car. *U-Haul Co. v. State Farm Mut. Auto. Ins. Co.*, App. D.C., 616 A.2d 1264 (1992).

Holding automobile registration certificate at time of accident is not conclusive as to ownership within this subchapter, notwithstanding statutory definition of owner as one who holds legal title of a vehicle. *Johnson v. Keyes*, App. D.C., 201 A.2d 24 (1964).

Lessees as owners. — In the context of a vehicle lease, paragraph (7) plainly provides that the owner shall be the lessee where there is a right of purchase and the lessee has an immediate right of possession. By its express terms, paragraph (7) applied where the lease agreement gave lessee the right to immediate possession of the car, as well as the right to purchase it at the conclusion of the lease term. *Shannon-Huber v. General Elec. Capital Auto Lease, Inc.*, App. D.C., 676 A.2d 467 (1996).

Lessors not owners. — Lessors who give lessees the right to immediate possession and

the option to purchase are not owners under § 40-408. *Shannon-Huber v. General Elec. Capital Auto Lease, Inc.*, App. D.C., 676 A.2d 467 (1996).

Lessor of fleet of automobiles to federal agency not liable as “owner.” — It is the immediate right of control, as an incident of ownership, that is the focus of the Motor Vehicle Safety Responsibility Act; given Ford Motor Company’s position as the lessor of a fleet of automobiles to a federal agency, Ford cannot be held liable as an “owner” under this Act for injuries sustained by a plaintiff struck by a federal agency employee driving a leased auto within scope of his duties. *Lee v. Ford Motor Co.*, 595 F. Supp. 1114 (D.D.C. 1984).

Existence of sale. — There is a sale where the minds of the buyer and the seller have met on all essential terms of a contract of sale and the automobile is delivered by the seller and unconditionally accepted by the buyer, despite any omission to comply strictly with the law regulating transfer and recordation of title. *Frei v. Gordon*, App. D.C., 215 A.2d 488 (1965).

Defective registration following sale. — Where there had been a meeting of minds of the sellers and the buyer, payment of purchase price by the buyer and delivery of automobiles by the sellers, the sellers were not the “owners” and were not liable for damage caused by the

buyer’s negligent operation of automobile, notwithstanding fact that notarization of assignment of title, was defective and automobile was still registered in sellers’ names. *Burt v. Cordover*, App. D.C., 117 A.2d 116 (1955).

That codefendant in an action for personal injuries resulting from automobile collision was the seller under a conditional sales contract with a reservation of title clause did not establish him as owner as clause was intended to provide only means of achieving security for unpaid balance of purchase price. *Herman v. Anacostia Chrysler-Plymouth, Inc.*, 350 F.2d 781 (D.C. Cir. 1965).

Compliance with no-fault insurance requirements. — Truck rental company’s compliance with the Compulsory/No-Fault Motor Vehicle Insurance Act did not sufficiently protect the public from negligent drivers of their rented vehicles without additional exposure as an owner under paragraph (7) of this section. *U-Haul Co. v. State Farm Mut. Auto. Ins. Co.*, App. D.C., 616 A.2d 1264 (1992).

Cited in *Houston v. District of Columbia*, App. D.C., 149 A.2d 790 (1959); *Bush v. Johnson*, App. D.C., 215 A.2d 850 (1966); *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979); *Curtis v. Cuff*, App. D.C., 537 A.2d 1072 (1987).

§ 40-403. Administration.

(a) The Mayor shall administer and enforce the provisions of this subchapter. The Mayor may issue rules necessary to implement the provisions of this subchapter, including, but not limited to, the amendment and revision of Chapter 8 of 18 DCMR. The fee for the reinstatement of a license or of a registration certificate shall be \$30.

(b) The Mayor shall receive and consider any pertinent information upon request of persons aggrieved by their orders or acts under any of the provisions of this subchapter.

(c) The Mayor shall prescribe and provide suitable forms requisite or deemed necessary for the purpose of this subchapter.

(d) The Mayor shall retain records required for the administration of this subchapter for a period of 5 years, after which the Mayor may destroy or otherwise dispose of such records.

(e) Nothing in this subchapter shall diminish or affect, or be construed to diminish or affect any rights, duties, or obligations of any person under the Compulsory/No-Fault Motor Vehicle Insurance Act of 1982. (May 25, 1954, 68 Stat. 121, ch. 222, § 3; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 1; Oct. 31, 1969, 83 Stat. 175, Pub. L. 91-106, title IV, § 406; 1973 Ed., § 40-419; Apr. 3, 1982, D.C. Law 4-97, § 3, 29 DCR 765; Sept. 18, 1982, D.C. Law 4-155, § 14(c)(1), 29 DCR 3491; Aug. 2, 1983, D.C. Law 5-24, § 7, 30 DCR 3341.)

Cross references. — As to senior citizen motor vehicle accident prevention course certification, see subchapter II of this chapter.

Legislative history of Law 4-97. — Law 4-97 was introduced in Council and assigned Bill No. 4-337, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on January 12, 1982, and January 26, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-155 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-155. — Law 4-155 was introduced in Council and assigned Bill No. 4-140, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted first, amended first, second amended first, and second readings on May 11, 1982, May 25, 1982, June 8, 1982, and June 22, 1982, respectively. Deemed approved without Mayoral signature upon expiration of the Mayoral review period on July 22, 1982, it was assigned Act No. 4-226 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-24. — Law 5-24 was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and on May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

References in text. — The “Compulsory/

No-Fault Motor Vehicle Insurance Act of 1982”, referred to at the end of subsection (e) of this section, is D.C. Law 4-155.

Editor’s notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, “subchapter” has been substituted for “chapter” in this section.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(294) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-404. Review by Mayor.

(a) Any order or act of any agent of the Mayor under the provisions of this subchapter shall be subject to review by the Mayor. Application for review of any such order or act shall be in writing and shall set out in detail the reasons for such review. Such application shall be filed with the Mayor within 5 days after the issuance of the order or occurrence of the act in question. If upon review the Mayor shall sustain such order or act, the same shall become effective immediately.

(b) Any person whose license or motor vehicle registration shall be denied, suspended, or revoked by the Mayor under the provisions of this subchapter may, within 30 days after such denial, revocation, or suspension has been reviewed by the Mayor and sustained by him, file in the District of Columbia Court of Appeals an application for the allowance of an appeal from the order or decision of the Mayor. Appeal shall be as provided in title I of the District of Columbia Administrative Procedure Act (D.C. Code §§ 1-1501 et seq.).

(c) Notwithstanding any other provision of this section the provisions of title I of the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 et seq.), and particularly those of § 1-1509, apply to each proceeding, decision, or other administrative action specified in this subchapter.

(d) For the purposes of this section, the phrase “review by the Mayor” shall mean a review by the Mayor of the District of Columbia or a review by any board of review established by the Mayor of the District of Columbia to review the order or act of any agent of the Mayor pursuant to the provisions of this subchapter. No member of such board of review established by the Mayor shall review any of his own orders or acts. (May 25, 1954, 68 Stat. 122, ch. 222, § 4; Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 3; July 8, 1963, 77 Stat. 78, Pub. L. 88-60, § 6; July 29, 1970, 84 Stat. 583, Pub. L. 91-358, title I, § 163(h); 1973 Ed., § 40-420; Apr. 26, 1977, D.C. Law 1-133, title I, § 101, 23 DCR 9697.)

Cross references. — As to suspension for or after conviction of certain crimes, see §§ 40-437 and 40-439.

As to suspension for transfer of registration to defeat purpose of subchapter, see § 40-469.

Legislative history of Law 1-133. — See note to § 40-102.

Editor’s notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, “subchapter” has been substituted for “chapter” in this section.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Method of review unchanged by administrative and criminal procedure legislation. — Neither the subsequently enacted Administrative Procedure Act nor District of Columbia Court Reform and Criminal Procedure Act of 1970 change the method of seeking review under this section. *Thomas v. District of Columbia Bd. of Appeals & Review*, App. D.C., 355 A.2d 789 (1976).

Person considered aggrieved although review of order not sought. — An uninsured motorist who posted the administratively required security following involvement in an

automobile mishap and who did not seek review of the order could nevertheless be considered a person suffering a legal wrong, or adversely affected or aggrieved by order or decision within meaning of District of Columbia Administrative Procedure Act. *Smith v. Murphy*, App. D.C., 294 A.2d 357 (1972).

Judicial review in safety responsibility cases discretionary. — The Court of Appeals is not required to accept a safety responsibility case on petition for review as matter of right from contested case determination under § 1-1510 but rather review is discretionary on application for allowance of appeal. *Thomas v. District of Columbia Bd. of Appeals & Review*, App. D.C., 355 A.2d 789 (1976).

Declaratory and injunctive relief precluded where statutory review not utilized. — Uninsured motorists who were in traffic mishaps and required to comply with the security provisions of this subchapter, but who failed to utilize statutorily prescribed mode for review were precluded from maintaining action for declaratory and injunctive relief to require the Department to follow certain procedures when proceeding under the Act. *Smith v. Murphy*, App. D.C., 294 A.2d 357 (1972).

Likelihood of failure at administrative level no justification for resort to court. — To hold that the likelihood of failure to succeed at administrative level justified resort to court of general jurisdiction would frustrate specific mandate of Congress giving court discretion as to whether to review adverse orders and providing that such review, if allowed, be on an administrative record and as provided by District of Columbia Administrative Procedure Act. *Smith v. Murphy*, App. D.C., 294 A.2d 357 (1972).

Nor is assertion of class action. — Uninsured motorists who failed to follow the necessary administrative remedies could not maintain an action in court on the ground that they asserted a class action, since the similarly situated class must also be deemed to be persons who had not exercised their right to review as prescribed by statute. *Smith v. Murphy*, App. D.C., 294 A.2d 357 (1972).

Cited in *Haith v. Commissioners of D.C.*, App. D.C., 135 A.2d 458 (1957).

§ 40-405. Abstract of operating record.

(a) The Mayor shall, upon request, furnish any person a certified abstract of the District of Columbia operating record of any person subject to the provisions of this subchapter, which abstract shall include enumeration of any motor vehicle accidents in which such person has been involved and reference to any convictions of said person for violation of the motor vehicle laws as reported to the Mayor and a record of any vehicles registered in the name of such person. The Mayor shall collect for each abstract the sum of \$5.

(b) The Mayor shall upon request furnish any person an uncertified abstract of the District operating record of any person subject to the provisions of this subchapter, which abstract shall include enumeration of any motor vehicle accidents in which such person has been involved and reference to any convictions of said person for violation of the motor vehicle laws, as reported to the Mayor. The Mayor shall collect for each such uncertified abstract a sum equal to the cost to the District of furnishing such abstract, as such cost may be determined by the Mayor from time to time. (May 25, 1954, 68 Stat. 122, ch. 222, § 5; 1973 Ed. § 40-421; Apr. 3, 1982, D.C. Law 4-97, § 4, 29 DCR 765; Aug. 17, 1991, D.C. Law 9-30, § 5, 38 DCR 4215.)

Legislative history of Law 4-97. — See note to § 40-301.1.

Legislative history of Law 9-19. — Law 9-19, the “Omnibus Budget Support Temporary Act of 1991,” was introduced in Council and assigned Bill No. 9-205. The Bill was adopted on first and second readings on May 7, 1991, and June 4, 1991, respectively. Signed by the Mayor on June 21, 1991, it was assigned Act No. 9-43 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-30. — Law 9-30, the “District of Columbia Motor Vehicle Services Fees Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-163, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-57 and transmitted to both Houses of Congress for its review.

Editor’s notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, “subchapter” has been substituted for “chapter” in this section.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Dunhill v. Director*, D.C. Dep’t of Transp., App. D.C., 416 A.2d 244 (1980).

§ 40-406. Information regarding financial responsibility to be furnished person injured.

The Mayor shall furnish to any person who may be injured in person or property by any motor vehicle, upon written request, a statement that the owner or operator of any motor vehicle has furnished evidence of his ability to

respond in damages in accordance with the provisions of this subchapter, and if such owner or operator shall have furnished evidence of having had in effect at the time of such injury or damage a motor vehicle liability policy, the name and address of the insurance carrier writing such policy. The Mayor shall collect for each abstract the sum of \$2. (May 25, 1954, 68 Stat. 122, ch. 222, § 6; 1973 Ed., § 40-422.)

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-407. Service of process on nonresident.

(a) The operation by a nonresident or by his agent of a motor vehicle on any public highway of the District of Columbia shall be deemed equivalent to an appointment by such nonresident of the Mayor or his successor in office to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceedings against such nonresident growing out of any accident or collision in which said nonresident or his agent may be involved while operating a motor vehicle on any such public highway, and said operation shall be a signification of his agreement that any such process against him, which is so served, shall be of the same legal force and validity as if served upon him personally in the District of Columbia. Service of such process shall be made by leaving a copy of the process with a fee of \$2 in the hands of the Mayor or in his office, and such service shall be sufficient service upon the said nonresident; provided, that the plaintiff in such action shall first file in the court in which said action is commenced an undertaking in form and amount, and with one or more sureties, approved by said court, to reimburse the defendant, on the failure of the plaintiff to prevail in the action, for the expenses necessarily incurred by the defendant, including a reasonable attorney's fee in an amount to be fixed by the said court in defending the action in the District of Columbia, except that nothing contained in this proviso shall be construed to require the United States or the District of Columbia to file the undertaking hereby required; and provided further, that notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff, or his attorney, to the defendant, and the defendant's return receipt appended to the writ and entered with the declaration, or such notice of such service and a copy of the process may be served upon the defendant in the manner provided by § 13-108. The court in which the action is pending may order such continuances as may be necessary to afford the defendant a reasonable

opportunity to defend the action, and no judgment by default in any such action shall be granted until at least 20 days shall have elapsed after service upon the defendant, as hereinabove provided, of a copy of the process and notice of service of said process upon the Mayor.

(b) For the purposes of this section:

(1) The term "operation" as used in connection with a motor vehicle includes any use as well as any operation of such vehicle.

(2) The term "nonresident" shall include any person who is not a resident of the District of Columbia and who was the owner or operator of a motor vehicle at the time such vehicle was involved in an accident or collision in the District of Columbia, and includes any such person who was a resident of the District of Columbia at the time such motor vehicle was involved in such accident or collision but who subsequently became a nonresident of the District of Columbia and is a nonresident thereof at the time process is sought to be served on him as a result of such accident or collision.

(c) The appointment of the Mayor or his successor in office to be the true and lawful attorney for such nonresident as provided by this section shall be irrevocable and binding upon the executor, administrator, or other personal representative of such nonresident. Where a nonresident has been served in accordance with this section and he dies thereafter, the court must allow the action to be continued against his executor, administrator, or other personal representative upon motion, and with such notice as the court deems proper. Except as otherwise provided in the 2 preceding sentences, service of process may be made on the executor, administrator, or other personal representative of a nonresident in the same manner as is provided in this section in the case of a nonresident. (May 25, 1954, 68 Stat. 123, ch. 222, § 7; Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 4; 1973 Ed., § 40-423.)

References in text. — Section 13-108, referred to in subsection (a) of this section, was repealed by the Act of December 23, 1963, 77 Stat. 620, Pub. L. 88-241.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

Section to be strictly construed. — In authorizing substituted service on nonresident motorists, in derogation of the common law, Motor Vehicle Safety Responsibility Act affects substantial rights and must therefore be strictly construed and strictly complied with. *Heinrich v. Huke*, App. D.C., 244 A.2d 915 (1968).

Long-arm statute independent of this chapter. — The long-arm statute enacted as part of the Court Reorganization Act of 1970 exists independently of the Motor Vehicle Safety Responsibility Act as an alternative, independent method for acquiring in personam jurisdiction over a nonresident motorist. *Liberty Mut. Ins. Co. v. Burgess*, App. D.C., 308 A.2d 775 (1973).

Notice is essential to the court's jurisdiction. *Harper v. Catherton*, App. D.C., 255 A.2d 492 (1969).

Filing of return receipt is not an integral part of the Motor Vehicle Safety Responsibility Act. *Harper v. Catherton*, App. D.C., 255 A.2d 492 (1969).

Plaintiff's choice of forum. — Unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed. *Caspar v. Devine*, 257 F.2d 197 (D.C. Cir. 1958).

Section inapplicable to nonresident under diplomatic immunity. — Assuming that the defendant when served in India under this section was no longer entitled to diplomatic immunity, he was not "nonresident" to whom Act was applicable where, at time of collision out of which suit arose, he enjoyed diplomatic immunity. *Shaffer v. Singh*, 343 F.2d 324 (D.C. Cir. 1965).

Delay in mailing summons and complaint. — Mailing a summons and complaint to nonresident motorist 7 months after statute of limitations had run constituted failure to comply with the requirement of subsection (a) of this section that notice of such service and copy of process be sent forthwith by registered mail. *Heinrich v. Huke*, App. D.C., 244 A.2d 915 (1968).

Service on defendant at place of work. — Although defendant was a resident of Maryland at the time service was purported to have been made under the Motor Vehicle Safety Responsibility Act, that fact did not render notice to the defendant in Virginia at his place of work ineffective, as the statute requires that notice of such service be sent to defendant, not to him at his residence. *Harper v. Catherton*, App. D.C., 255 A.2d 492 (1969).

Where there was no conclusive proof that nonresident motorist actually received notice of service, purported to have been made under this section, it was not error to vacate default judgment previously entered

against motorist. *Harper v. Catherton*, App. D.C., 255 A.2d 492 (1969).

Review of dismissal without prejudice. — Where, on the date a complaint was filed, the plaintiff furnished copies of the complaint to be served to initiate the process of effecting service on nonresident defendants, but no undertaking was filed and no return of service appeared in the docket, and subsequently the court dismissed the complaint without prejudice, there was final judicial action subject to appellate review, notwithstanding no appearance was entered for the appellees in the appellate court or in the District Court. *Caspar v. Devine*, 257 F.2d 197 (D.C. Cir. 1958).

Appointment of administrator for estate of deceased nonresident motorist. — The District of Columbia statute providing that administration may be granted on application of largest creditor in absence of application for administration by one entitled to apply therefor and this section permitted a motorist who had a cause of action against estate of deceased nonresident motorist for injuries sustained in collision in District to have administrator appointed for decedent, where cause of action, if established, would give motorist right to proceed against decedent's insurer, notwithstanding that decedent's widow was named as executrix in decedent's will and that she had declined or failed to come into District of Columbia and that petition for administration recited that decedent was resident of District of Columbia. *O'Sullivan v. Hicks*, 313 F.2d 900 (D.C. Cir. 1963).

Cited in *Orban v. State Auto. Ass'n*, App. D.C., 127 A.2d 143 (1956); *Rapid Rentals, Inc. v. Myers*, 115 WLR 2453 (Super. Ct. 1987); *Bulin v. Stein*, App. D.C., 668 A.2d 810 (1995).

§ 40-408. Operator deemed to be agent of owner.

Whenever any motor vehicle, after the passage of this subchapter, shall be operated upon the public highways of the District of Columbia by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed to be the agent of the owner of such motor vehicle, and the proof of the ownership of said motor vehicle shall be prima facie evidence that such person operated said motor vehicle with the consent of the owner. (May 25, 1954, 68 Stat. 123, ch. 222, § 8; 1973 Ed., § 40-424.)

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

This section was designed to protect persons and property of District residents by encouraging safe driving and providing injured parties with potential defendants. *Wil-*

liams v. Rawlings Truck Line, 357 F.2d 581 (D.C. Cir. 1965).

Construction of section. — This section and § 35-2102, although different sections of the Code, are subject to similar legal analysis; just as insurance policies in the District are construed in favor of coverage, the statutory law on agency creates a presumption of consent. *Martinage v. Shapiro, et al.*, 125 WLR 2001 (Super. Ct. 1997).

Consent which is contemplated by this section is informed consent, based on knowledge, not clouded by mistake or misrepresentation, or produced by error of fact. *McClellan v. Allstate Ins. Co.*, App. D.C., 247 A.2d 58 (1968).

Law governing determination of liability. — The principle that questions of liability in tort are governed by the law of the state in which the tort is committed is subject to exception where the forum does not possess the necessary procedural machinery to enforce such law. *Baker v. Gaffney*, 141 F. Supp. 602 (D.D.C. 1956), but see, *Edmunds v. Edmunds*, 353 F. Supp. 287 (D.D.C. 1972).

This section is inapplicable where at time of injury automobile was being operated in Maryland. *Gaither v. Myers*, 404 F.2d 216 (D.C. Cir. 1968).

Proof of ownership placed burden of disproving consent on owner. — In an action against the District of Columbia for damages sustained when a recreation department truck collided with the plaintiff's automobile, the presumption under the Motor Vehicle Safety Responsibility Act that driver was operating the truck with the consent of the District arose out of proof of ownership of truck by the District and placed on the District the burden of proving that the truck at time of the accident was not operated with the District's express or implied consent. *District of Columbia v. Abramson*, App. D.C., 148 A.2d 578 (1959).

Under this section, a presumption of agency is created upon proof of ownership and imposes upon owner the affirmative duty of proving that at time of accident the vehicle was not operated with his express or implied consent. *Miller v. Imperial Ins., Inc.*, App. D.C., 189 A.2d 359 (1963).

Titleholder liable as "owner" of truck rented on short-term basis. — Titleholder of rented truck, which was driven by a short-term lessee, was held liable under this Act as the "owner" of the truck, which struck plaintiff's legally parked car. *U-Haul Co. v. State Farm Mut. Auto. Ins. Co.*, App. D.C., 616 A.2d 1264 (1992).

Registration of legal title to automobile in one's name is not conclusive as to ownership within the Motor Vehicle Safety Responsibility Act. *Spindle v. Reid*, App. D.C., 277 A.2d 117 (1971).

Lessors not owners. — Lessors who give lessees the right to immediate possession and the option to purchase are not owners under this section. *Shannon-Huber v. General Elec. Capital Auto Lease, Inc.*, App. D.C., 676 A.2d 467 (1996).

Lessor of fleet of automobiles to federal agency not liable as "owner." — It is the immediate right of control, as an incident of ownership, that is the focus of the Motor Vehi-

cle Safety Responsibility Act; given Ford Motor Company's position as the lessor of a fleet of automobiles to a federal agency, Ford cannot be held liable as an "owner" under this Act for injuries sustained by a plaintiff struck by a federal agency employee driving a leased auto within scope of his duties. *Lee v. Ford Motor Co.*, 595 F. Supp. 1114 (D.D.C. 1984).

Proof necessary to overcome statutory presumption of consent. — The statutory presumption that vehicle was driven with owner's consent continues only until there is credible evidence to contrary, and ceases when there is uncontradicted proof that automobile was not at the time being used with owner's permission. *Hudson v. Lazarus*, 217 F.2d 344 (D.C. Cir. 1954); *Jones v. Halun*, 296 F.2d 597 (D.C. Cir. 1961), cert. denied, 370 U.S. 904, 82 S. Ct. 1249, 8 L. Ed. 2d 401 (1962).

The statutory presumption of consent may be overcome by positive testimony of motor vehicle's owner, and if such presumption is overcome by uncontradicted proof, the owner is entitled to a directed verdict as a matter of law; but if on the other hand, evidence contains inconsistencies and self-contradictions or is reasonably subject to contradictory interpretations, question is one of fact for jury determination. *Stumpner v. Harrison*, App. D.C., 136 A.2d 870 (1957).

Mere ownership of vehicle causing accident creates a presumption that operation was with the consent of the owner, but such may be overcome by uncontradicted proof that the vehicle was not being operated with the owner's consent, and when so overcome, the owner is entitled to a directed verdict. *Sawyer v. Miseli*, App. D.C., 156 A.2d 141 (1959).

Positive, unequivocal, and uncontradicted testimony of owner of an automobile that it was not being used with his permission, at time it was involved in an accident in question, may constitute uncontradicted proof to that effect, for purposes of excusing owner from liability, but if the proof offered by the owner contains inconsistencies and self-contradictions, raising doubt as to owner's credibility or that of his witnesses, issue of permissive use of the automobile is for the jury. *Farall v. Ellis*, App. D.C., 157 A.2d 127 (1960).

Under this section, the presumption of agency can be overcome by uncontradicted proof sufficient to destroy the inference. *Miller v. Imperial Ins., Inc.*, App. D.C., 189 A.2d 359 (1963); *Edens v. Musolino*, 731 F. Supp. 533 (D.D.C. 1990).

The owner of an automobile operated by another must prove that it was not being driven with his consent at time of accident to avoid liability for any negligence of the driver, but the presumption may be rebutted by uncontradicted denial by owner that vehicle was being

operated with his consent. *Lancaster v. Canuel*, App. D.C., 193 A.2d 555 (1963).

The statutory presumption that proof of ownership of a motor vehicle shall be prima facie evidence that the motor vehicle was being operated with the consent of the owner may be overcome by uncontradicted denial by the owner, and in such a case a directed verdict for owner is proper. *Meyers v. Gaither*, App. D.C., 232 A.2d 577 (1967), *aff'd*, 404 F.2d 216 (D.C. Cir. 1968).

A presumption that a motor vehicle involved in an accident was being operated with the consent of the owner is a rebuttable one and continues only until overcome by uncontradicted proof sufficient to destroy the inference. *McClellan v. Allstate Ins. Co.*, App. D.C., 247 A.2d 58 (1968).

The statutory presumption that owner has consented to operator's use of his vehicle is rebuttable by uncontradicted and manifestly credible testimony to contrary, and though such uncontradicted proof entitles the owner to a directed verdict as matter of law in an action against him as result of operation of his vehicle, trier of fact must assume the usual role of resolving any conflict presented if evidence is not so convincing or positive. *Alsbrooks v. Washington Deliveries, Inc.*, App. D.C., 281 A.2d 220 (1971).

Uncontradicted proof requires evidence which destroys all inferences and presumptions supporting 1 party, and which raises no doubts against the other party. *Farall v. Ellis*, App. D.C., 157 A.2d 127 (1960).

Rebuttal of consent presumption entitled defendant to judgment as matter of law. — Where defendant offered uncontested evidence to rebut the statutory presumption of consent, she was entitled to judgment as a matter of law. *Curtis v. Cuff*, App. D.C., 537 A.2d 1072 (1987).

Relevant time for determining consent is at the time of the accident. *Curtis v. Cuff*, App. D.C., 537 A.2d 1072 (1987).

This section applies where automobile was jointly owned by driver and co-owner so as to make such co-owner presumptively liable for driver's acts and to warrant imposition of liability on him where he offered no proof whatever. *Joyner v. Holland*, App. D.C., 212 A.2d 541 (1965).

Defendant not obligated to take affirmative steps to keep co-owner from driving car. — To avoid liability under this section, defendant was not required to take affirmative steps to keep co-owner from driving the car. *Curtis v. Cuff*, App. D.C., 537 A.2d 1072 (1987).

Employee's unauthorized use of employer's vehicle. — Inasmuch as an employee admitted that he took an automobile from his employer's lot in order to drive on his own errand after his hours of employment and to

achieve no objective directly or indirectly furthering his employer's business, the employer was not liable to persons injured by employee's careless operation of automobile. *Lancaster v. Canuel*, App. D.C., 193 A.2d 555 (1963).

Effect of Employees Non-Liability Act. — The fact that the Employees Non-Liability Act barred an action by a passenger-schoolteacher against a driver-schoolteacher did not preclude an action by passenger-schoolteacher against the owner of the vehicle. *Davis v. Harrod*, 407 F.2d 1280 (D.C. Cir. 1969).

The District of Columbia rule that a married woman may not maintain action under this subchapter for injuries she sustained as a passenger in an automobile driven by one who was, at time of maintaining action, her husband, against person who lent automobile to her husband, whether or not spouses were married at time of accident, was applicable to preclude actions being brought in the District for injuries sustained in New York. *Baker v. Gaffney*, 141 F. Supp. 602 (D.D.C. 1956), but see, *Edmunds v. Edmunds*, 353 F. Supp. 287 (D.D.C. 1972).

Interspousal immunity which was conferred on husband-driver, under District of Columbia law, did not extend to automobile owner, sued for injuries sustained by passenger-wife. *Edmunds v. Edmunds*, 353 F. Supp. 287 (D.D.C. 1972).

Title holder not owner of automobile. — An automobile title holder who did not have power to allow or prevent use of automobile by her husband at time husband was involved in accident was not the owner of the automobile within the meaning of the Motor Vehicle Safety Responsibility Act. *Johnson v. Keyes*, App. D.C., 201 A.2d 24 (1964).

Where registered owner of automobile who was automobile operator's mother had no right to prevent operator's use of automobile but rather took title to automobile merely to accommodate operator, with whom financing bank declined to deal directly because of his minority, and payments on automobile were made by operator out of his own earnings, operator rather than registered owner is the "owner" of the automobile within the Motor Vehicle Safety Responsibility Act and the registered owner is not liable for operator's negligence. *Spindle v. Reid*, App. D.C., 277 A.2d 117 (1971).

Evidence sufficient to overcome presumption of consent. — The presumption under this subchapter that a District employee was operating a recreation department truck with the consent of the District while driving the truck back from lunch at his home was overcome by evidence consisting of a District regulation requiring that government-owned vehicles be used exclusively for official purposes and testimony of employee's superiors in the department that the employee did not have

permission to use truck to go home for lunch. *District of Columbia v. Abramson*, App. D.C., 148 A.2d 578 (1959).

In an action for damages sustained when a plaintiff's taxicab was struck by an automobile owned by defendant, evidence, including testimony that driver and passenger in the automobile ran away from it after the collision which occurred about 4 blocks from automobile owner's home, and that automobile owner appeared on the scene shortly after the occurrence, was sufficient to present a question for the jury as to whether automobile was being driven at time of the accident by owner, or with consent of the owner. *Farall v. Ellis*, App. D.C., 157 A.2d 127 (1960).

Whether automobile owner whose keys were removed while he was asleep at a home where he had gone with one who drove his automobile in collision had given permission to him to use automobile was question for trier of fact. *Hancock v. Morris*, App. D.C., 173 A.2d 922 (1961).

Positive statements of automobile owner that he had never given his employee, who borrowed an automobile, the right to drive the automobile after business hours and that he had never known of employee doing so destroyed any presumption that automobile was being used with his permission at time of accident resulting from employee's negligence. *Lancaster v. Canuel*, App. D.C., 193 A.2d 555 (1963).

Evidence raised a fact question whether an automobile title holder, sued for property damage allegedly caused while automobile was operated by her husband, had consented to such operation, where title holder testified that upon occurrence of marital separation before the accident, her husband took automobile with him. *Johnson v. Keyes*, App. D.C., 201 A.2d 24 (1964).

Where the lessor of a truck notified the lessee, pursuant to the provisions of the lease, that a given employee of the lessee must no longer be permitted to drive the truck, the lessor could not, under this section, be presumed to have permitted such employee of lessee to drive. *Neary v. Hertz Corp.*, 231 F. Supp. 480 (D.D.C. 1964).

Where uncontradicted testimony indicated that employee's use of delivery truck at time of collision was without employer's permission, presumption of agency arising from employer's ownership of truck was overcome. *Eastern Aquatics, Inc. v. Washington*, App. D.C., 213 A.2d 293 (1965).

Evidence on the issue of whether defendant automobile owner consented to use of her automobile by defendant driver, who was an employee of a corporation of which the owner was a major stockholder, and who had used owner's automobile on other occasions, and with whom owner left her keys and note about certain

errands, was for the jury in action for damages sustained by plaintiffs in collision with that automobile. *Williams v. Baines*, App. D.C., 257 A.2d 762 (1969).

Even though an automobile rental company did not report rental violation by lessee to District police after the date of expiration of the rental period and took no other steps to recover automobile or locate lessee, the filing of a criminal complaint by the rental company against the lessee in Maryland for failure to return the automobile prior to the time of an accident involving the lessee was sufficient to rebut presumption that the rental company's automobile was operated at time of accident with company's consent for purposes of application of the Financial Responsibility Act. *Amicar Rentals, Inc. v. Moore*, App. D.C., 294 A.2d 361 (1972).

Evidence insufficient to overcome consent presumption. — The evidence was insufficient to present a question to the jury as to whether the owner of an automobile could be held liable under Financial Responsibility Act for injuries sustained in a collision when the automobile was being driven by an employee of a service station and it appeared that the owner at most entrusted the employee with driving automobile from owner's place of work to service station, and that employee was not driving back to the station by any route at time of collision but was driving away from it. *Hudson v. Lazarus*, 217 F.2d 344 (D.C. Cir. 1954).

In an action brought by an automobile owner to recover for damage sustained when his automobile was struck while parked at night against one whose automobile had been identified as the one doing the damage, the defendant's evidence that neither he nor anyone with his consent had driven his automobile at the time involved was not so uncontradicted as to justify withdrawal of matter from jury. *Love v. Gaskins*, App. D.C., 153 A.2d 660 (1959).

Evidence was insufficient to present question for jury as to whether owner of automobile could be held liable under this subchapter for injuries sustained in collision when automobile was being driven by companion of owner's son and it appeared that owner had forbidden son to let anyone else drive automobile. *Jones v. Halun*, 296 F.2d 597 (D.C. Cir. 1961), cert. denied, 370 U.S. 904, 82 S. Ct. 1249, 8 L. Ed. 2d 401 (1962).

Motion to set aside default judgment where ownership not proved. — Where plaintiff obtained a default judgment in automobile accident case and the court had jurisdiction of the subject and of the parties, and there was a lack of proof of ownership of the automobile involved, such fact would render the judgment merely erroneous and not void, and hence motion to set it aside was properly denied.

Lynch v. Williams, App. D.C., 162 A.2d 770 (1960).

Cited in Butler v. Pearson, 636 F.2d 526 (D.C. Cir. 1980); Estate of Chappelle v. Sanders, App. D.C., 442 A.2d 157 (1982); District of

Columbia Rent-A-Car Co. v. Cochran, App. D.C., 463 A.2d 696 (1983); Northbrook Ins. Co. v. United Servs. Auto. Ass'n, App. D.C., 626 A.2d 915 (1993).

§§ 40-409 to 40-433. Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D. C.; accident report (required; form; not required during incapacity; additional information to be furnished on request; suspension authorized for failure to report; confidential); deposit of security (when applicable; amount; exceptions); automobile liability policy or bond; requirements; deposit of security (generally; suspension for failure; release from liability; adjudication of nonliability); agreements for payment of damages; payment upon judgment; release of judgment debtor; termination of security requirement; duration of suspension; nonresidents; unlicensed drivers; unregistered vehicles; accidents in other states; Mayor authorized to decrease amount of security; correction of Mayor's action within 1 year; disposition of security; return of deposit; matters not to be evidence in civil suits.

Repealed. Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.

Legislative history of Law 4-155. — See note to § 40-403.

§ 40-434. Persons required to deposit proof of future responsibility.

The provisions of this subchapter requiring the deposit of proof of financial responsibility for the future, subject to certain exemptions, shall apply with respect to persons who have been convicted of or forfeited bail for certain offenses under motor vehicle laws or who have failed to pay judgments upon causes of action arising out of ownership, maintenance, or use of vehicles of a type subject to registration under the laws of the District of Columbia. (May 25, 1954, 68 Stat. 129, ch. 222, § 34; 1973 Ed., § 40-450.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

§ 40-435. “Proof of financial responsibility for the future”, “proof”, or “proof of financial responsibility” defined.

The terms “proof of financial responsibility for the future” or “proof” or “proof of financial responsibility” as used in this subchapter shall mean: Proof that the motor vehicle subject to registration or reciprocity under the laws of the District of Columbia is an insured motor vehicle under the provisions of the Compulsory/No-Fault Motor Vehicle Insurance Act of 1982. (May 25, 1954, 68 Stat. 129, ch. 222, § 35; 1973 Ed., § 40-451; Sept. 18, 1982, D.C. Law 4-155, § 14(c)(2), 29 DCR 3491.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Legislative history of Law 4-155. — See note to § 40-403.

References in text. — The “Compulsory/No-Fault Motor Vehicle Insurance Act of 1982”, referred to at the end of the section, is D.C. Law 4-155.

Editor’s notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, “subchapter” has been substituted for “chapter” in this section.

§ 40-436. “Judgment” and “state” defined.

The following words and phrases when used in §§ 40-434 to 40-468 shall, for the purpose of such sections, have the meanings respectively ascribed to them in this section:

(1) The term “judgment” shall mean any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state, the District of Columbia, or of the United States, upon a cause of action arising out of the ownership, maintenance, or use of any vehicle of a type subject to registration under the laws of the District of Columbia, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(2) The term “state” shall mean any state, territory, or possession of the United States, or any province of the Dominion of Canada. (May 25, 1954, 68 Stat. 130, ch. 222, § 36; 1973 Ed., § 40-452.)

Section references. — This section is referred to in §§ 40-437 and 40-446.

§ 40-437. Suspension of license and registration for certain convictions; effect of proof of financial responsibility; vehicles owned or leased by the United States, a state, or a political subdivision thereof; suspension for foreign convictions.

(a) The license and registration of all vehicles registered in the name of any person who by a final order or judgment shall have been convicted of, or shall have forfeited any bond or collateral given to secure appearance for trial for a violation of any of the following provisions of law: (1) operating a motor vehicle while the individual's blood or breath contains ten one-hundredths of 1% or more, by weight, of alcohol, or defendant's urine contains .13% or more, by weight, of alcohol, or while under the influence of intoxicating liquor or any drug or any combination thereof, or while the ability to operate a vehicle is impaired by the consumption of intoxicating liquor, or an individual under 21 years of age operating a motor vehicle when the individual's blood, breath, or urine contains any measurable amount of alcohol; (2) any homicide committed by means of a motor vehicle; (3) leaving the scene of an accident in which the motor vehicle driven by him was involved and in which there is personal injury, without giving assistance or making known his identity and address and the identity and address of the owner of said vehicle; (4) reckless driving involving personal injury; (5) any felony in the commission of which a motor vehicle is used; or (6) a conviction of, or forfeiture of bail or collateral for an offense in any state which, if committed in the District of Columbia, would be one of the offenses listed in clauses (1) through (5) of this subsection; shall be suspended by the Mayor and shall remain so suspended and shall not at any time thereafter be renewed, nor shall any other motor vehicle be thereafter registered in the name of such person as owner, except that: (1) if such owner has previously given or shall immediately give and thereafter maintain proof of financial responsibility for the future with respect to all such vehicles registered by such person as the owner, the Mayor shall not suspend such registration unless otherwise required or permitted by law; or (2) if a conviction arose out of the operation, with permission, of a vehicle owned by or leased to the United States, the District of Columbia, a state, or a political subdivision of a state or a municipality thereof, the Mayor shall not suspend the registration of any vehicle so owned or leased. If such person be not a resident of the District of Columbia, the privilege of operating any motor vehicle in the District of Columbia and the privilege of operation within the District of Columbia of any motor vehicle owned by him shall be suspended until he shall have furnished proof of financial responsibility for the future with respect to all such vehicles registered by such person as the owner, and such person shall not be allowed a license, nor shall such owner be allowed to register any vehicle in the District of Columbia, until he has complied with the requirements of §§ 40-434 to 40-468 to the same extent that would be necessary if, at the time of the conviction or forfeiture, he had held a license or had been the owner of a vehicle registered in the District of Columbia.

(b) Upon receipt of a certification from any state that the operating privilege of a resident of the District of Columbia has been suspended or revoked pursuant to a law providing for such suspension or revocation for a conviction or forfeiture under circumstances which would require the Mayor to suspend a nonresident's operating privilege had the offense occurred in the District of Columbia, the Mayor shall suspend the license of such resident and the registration of all vehicles registered in his name. (May 25, 1954, 68 Stat. 130, ch. 222, § 37; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 9; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 5; 1973 Ed., § 40-453; Aug. 5, 1981, D.C. Law 4-29, § 604(b)(2), 28 DCR 3081; Sept. 14, 1982, D.C. Law 4-145, § 9, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 13, 29 DCR 5753; May 24, 1994, D.C. Law 10-122, § 5, 41 DCR 1658.)

Cross references. — As to review of suspension, see § 40-404.

Section references. — This section is referred to in §§ 40-436 and 40-446.

Legislative history of Law 4-29. — Law 4-29 was introduced in Council and assigned Bill No. 4-123, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 9, 1981, it was assigned Act No. 4-51 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-145. — Law 4-145 was introduced in Council and assigned Bill No. 4-389, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-213 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-174. — Law 4-174 was introduced in Council and assigned Bill No. 4-398, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-257 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-12. — Law 10-12, the "Underage Drinking Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-261. The Bill

was adopted on first and second readings on May 4, 1993, and June 1, 1993, respectively. Signed by the Mayor on June 16, 1993, it was assigned Act No. 10-40 and transmitted to both Houses of Congress for its review. D.C. Law 10-12 became effective on September 11, 1993.

Legislative history of Law 10-122. — Law 10-122, the "Alcoholic Beverage Control Act and Rules Reform Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-207, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 21, 1994, it was assigned Act No. 10-214 and transmitted to both Houses of Congress for its review. D.C. Law 10-122 became effective on May 24, 1994.

Assessment of points for conviction outside District. — Where a driver had been convicted in Virginia of driving while under the influence of intoxicating liquors and such conviction had been certified to the District of Columbia, and where, as a result of such certification, driver's total points under the point system of regulation exceeded 12 thereby permitting revocation of operator's permit, there was no abuse of discretion in allowing points to be assessed for the conviction outside the District since, if incident had occurred in the District, it would have meant mandatory revocation of driver's permit without the exercise of any discretion, without a hearing and without reference to any point system. *Council v. Director of Motor Vehicles*, App. D.C., 159 A.2d 874 (1960).

§ 40-438. Duration of suspension.

The suspension or revocation hereinbefore required shall remain in effect and the Mayor shall not issue to such person any new or renewal of license or register or reregister in the name of such person as owner of any such vehicle until permitted under the motor vehicle laws of the District of Columbia and

not then unless and until such person shall give and thereafter maintain proof of financial responsibility for the future. (May 25, 1954, 68 Stat. 131, ch. 222, § 38; 1973 Ed., § 40-454.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-439. Suspension of unlicensed or licensed person after certain convictions; proof of financial responsibility required; certificate of conviction to be forwarded to Mayor.

(a) If a person by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for driving a motor vehicle within the District of Columbia at a time when his license is suspended or revoked, the operating privilege of such person shall be suspended and no license shall thereafter be issued to such person, but if such person has obtained a license prior to the time the Mayor has issued an order precluding the issuance of such license, then such license shall be suspended; and no vehicle shall continue to be registered or thereafter be registered in the name of such person as owner, unless such person shall give and thereafter maintain proof of financial responsibility.

(b) It shall be the duty of the clerk of the court in which any such conviction or forfeiture is ordered to forward immediately to the Mayor a certified copy of said order, which certified copy shall be prima facie evidence of the facts stated therein. (May 25, 1954, 68 Stat. 131, ch. 222, § 39; Aug. 28, 1958, 72 Stat. 956, Pub. L. 85-792, § 10; Oct. 17, 1968, 82 Stat. 1152, Pub. L. 90-589, § 1; 1973 Ed., § 40-455.)

Cross references. — As to review of suspension, see § 40-404.

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *District of Columbia v. Baylor*, 125 WLR 1665 (Super. Ct. 1997).

§ 40-440. Suspension of nonresidents' operating privilege; duration.

Whenever the Mayor suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility for the future. (May 25, 1954, 68 Stat. 131, ch. 222, § 40; 1973 Ed., § 40-456.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see *Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization* in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see *Reorganization Plans* in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-441. Report by courts of nonpayment of judgments.

Whenever any person fails within 30 days to satisfy any judgment, then upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court in which any such judgment is rendered within the District of Columbia to forward to the Mayor immediately upon such request a certificate of facts relative to such judgment, upon a form provided by the Mayor, which said certificate shall be prima facie evidence of the facts therein stated. (May 25, 1954, 68 Stat. 131, ch. 222, § 41; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 11; 1973 Ed., § 40-457.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see *Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization* in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see *Reorganization Plans* in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-442. Judgment against a nonresident — Transmittal of copy to license and registration official of defendant's state.

If the defendant named in any certified copy of a judgment reported to the Mayor is a nonresident, the Mayor shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registrations of the state of which the defendant is a resident. (May 25, 1954, 68 Stat. 131, ch. 222, § 42; 1973 Ed., § 40-458.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-443. Same — Suspension for nonpayment.

The Mayor upon receipt of a certified copy of a judgment or a certificate of facts relative to such judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this subchapter. (May 25, 1954, 68 Stat. 131, ch. 222, § 43; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 12; 1973 Ed., § 40-459.)

Section references. — This section is referred to in §§ 40-436, 40-437, 40-444 and 40-446.

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-444. Government vehicles; exception as to nonpayment of judgment provisions.

The provisions of § 40-443 shall not apply with respect to any such judgment arising out of an accident caused by the ownership or operation with permis-

sion, of a vehicle owned by or leased to the United States, a state or any political subdivision thereof, the District of Columbia or any political subdivision of the District of Columbia. (May 25, 1954, 68 Stat. 131, ch. 222, § 44; 1973 Ed., § 40-460.)

Section references. — This section is referred to in §§ 40-436, 40-437, 40-446 and 40-447.

§ 40-445. Consent by judgment creditor to retention of license, registration, or operating privileges by judgment debtor.

If the judgment creditor consents in writing, in such form as the Mayor may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the Mayor, in his discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in § 40-450, provided the judgment debtor furnishes proof of financial responsibility. (May 25, 1954, 68 Stat. 131, ch. 222, § 45; 1973 Ed., § 40-461.)

Section references. — This section is referred to in §§ 40-436, 40-437, 40-446 and 40-447.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-446. Effect of Mayor's finding that insurer obligated to pay judgment.

No license, registration or nonresident's operating privilege of any person shall be suspended under the provisions of §§ 40-434 to 40-468 if the Mayor shall find that an insurer was obligated to pay the judgment upon which suspension is based, at least to the extent and for the amounts required in this subchapter, but has not paid such judgment for any reason. A finding by the Mayor that an insurer is obligated to pay a judgment shall not be binding upon such insurer and shall have no legal effect whatever except for the purpose of administering this section. Whenever in any judicial proceedings it shall be determined by any final judgment, decree or order that an insurer is not obligated to pay any such judgment, the Mayor, notwithstanding any contrary finding theretofore made by him shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against

whom such judgment was rendered, as provided in § 40-443. (May 25, 1954, 68 Stat. 132, ch. 222, § 46; 1973 Ed., § 40-462.)

Section references. — This section is referred to in §§ 40-436 and 40-437.

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-447. Continuance of suspension until judgment paid and proof given.

Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in §§ 40-444, 40-445, and 40-450, except that if the right to enforce said judgment by docketing and revival, or by revival, shall have expired without such docketing and revival, or if the judgment creditor fails to file notice of the docketing and revival of his judgment with the Mayor, the suspension of the license or registration of the judgment debtor shall be terminated. (May 25, 1954, 68 Stat. 132, ch. 222, § 47; 1973 Ed., § 40-463; Apr. 26, 1977, D.C. Law 1-133, title IV, § 401, 23 DCR 9697.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Legislative history of Law 1-133. — Law 1-133 was introduced in Council and assigned Bill No. 1-11, which was referred to the Committee on Transportation and Environmental Affairs, the Committee on the Judiciary and

the Committee on Criminal Law. The Bill was adopted on first and second readings on October 12, 1976 and November 23, 1976, respectively. Signed by the Mayor on February 14, 1977, it was assigned Act No. 1-230 and transmitted to both Houses of Congress for its review.

§ 40-448. Discharge in bankruptcy.

A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this subchapter. (May 25, 1954, 68 Stat. 132, ch. 222, § 48; 1973 Ed., § 40-464.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

Cited in *Lee v. England*, 206 F. Supp. 957 (D.D.C. 1962).

§ 40-449. Required payments; amounts; settlements.

(a) Judgments herein referred to shall, for the purpose of this subchapter only, be deemed satisfied:

(1) When \$10,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of 1 person as the result of any one accident; or

(2) When, subject to such limit of \$10,000 because of bodily injury to or death of 1 person, the sum of \$20,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury or death of 2 or more persons as the result of any one accident; or

(3) When \$5,000 has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(b) Payments made in settlements of any claims because of bodily injury, death, or property damage arising from such accident shall be credited in reduction of the amounts provided for in this section. (May 25, 1954, 68 Stat. 132, ch. 222, § 49; 1973 Ed., § 40-465.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

§ 40-450. Installment payment of judgments — Permitted.

(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The Mayor shall not suspend a license, registration, or nonresident's operating privilege, and shall restore any license, registration, or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installments is not in default. (May 25, 1954, 68 Stat. 132, ch. 222, § 50; 1973 Ed., § 40-466.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-445 to 40-447.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-451. Same — Default.

In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the Mayor shall forthwith suspend the license, registration, or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this subchapter. (May 25, 1954, 68 Stat. 133, ch. 222, § 51; 1973 Ed., § 40-467.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-452. Proof required for each registered vehicle.

No vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility for the future unless such proof shall be furnished for such vehicle. (May 25, 1954, 68 Stat. 133, ch. 222, § 52; 1973 Ed., § 40-468.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

§ 40-453. Alternate methods of giving proof.

Proof of financial responsibility when required under this subchapter, with respect to such a vehicle or with respect to a person who is not the owner of such a vehicle may be given by filing:

- (1) A certificate of insurance, as provided in § 40-454 or § 40-455; or
- (2) A certificate of self-insurance, as provided in § 40-478, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same amounts that an insurer would have been obliged to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer. (May 25, 1954, 68 Stat. 133, ch. 222, § 53; 1973 Ed., § 40-469; Sept. 18, 1982, D.C. Law 4-155, § 14(c)(3), 29 DCR 3491.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Legislative history of Law 4-155. — See note to § 40-403.

Editor's notes. — Because of the codifica-

tion of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

§ 40-454. Certificate of insurance as proof.

Proof of financial responsibility for the future may be furnished by filing with the Mayor the written certificate of any insurance carrier duly authorized to do business in the District of Columbia certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all vehicles covered thereby unless the policy is issued to a person who is not the owner of a motor vehicle. (May 25, 1954, 68 Stat. 133, ch. 222, § 54; 1973 Ed., § 40-470.)

Section references. — This section is referred to in §§ 40-436, 40-437, 40-446 and 40-453.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Erroneous filing of certificate. — An automobile liability insurer's erroneous filing of certificate of insurance in accordance with this chapter, even though the insured had not renewed the policy, estopped insurer from denying existence of policy meeting the minimum requirements of this chapter when the insured was involved in an accident after his original policy had expired. *Government Employees Ins. Co. v. Stonewall Cas. Co.*, App. D.C., 301 A.2d 72 (1973).

§ 40-455. Certificate filed by nonresident as proof of financial responsibility.

A nonresident may give proof of financial responsibility by filing with the Mayor a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the vehicle, or vehicles, owned by such nonresident is registered, or in the state in which such nonresident resides, if he does not own a vehicle, provided such certificate otherwise conforms with the provisions of this subchapter, and the Mayor shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

(1) Said insurance carrier shall execute a power of attorney authorizing the Mayor to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in the District of Columbia;

(2) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of the District of Columbia relating to the terms of motor vehicle liability policies issued therein. (May 25, 1954, 68 Stat. 133, ch. 222, § 55; 1973 Ed., § 40-471.)

Section references. — This section is referred to in §§ 40-436, 40-437, 40-446 and 40-453.

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Power of attorney's effect where accident occurred before chapter effective. — An insurance company's power of attorney authorizing acceptance of service of process in accordance with paragraph (1) of this section, even though power of attorney was broader than statutory requirements, could not be construed to apply in a judgment creditor's action arising from an accident which occurred prior to the effective date of this chapter. *Orban v. State Auto. Ass'n*, App. D.C., 127 A.2d 143 (1956).

§ 40-456. Default by nonresident insurance carrier.

If any insurance carrier not authorized to transact business in the District of Columbia, which has qualified to furnish proof of financial responsibility defaults in any said undertakings or agreements, the Mayor shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues. (May 25, 1954, 68 Stat. 134, ch. 222, § 56; 1973 Ed., § 40-472.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§§ 40-457, 40-458. "Motor vehicle liability policy" defined; notice of cancellation or termination of certified policy.

Repealed. Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.

Legislative history of Law 4-155. — See note to § 40-403.

§ 40-459. Provisions of subchapter not to affect other policies.

(a) This subchapter shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of the District of Columbia, and such policies, if they contain an agreement or are endorsed to conform with the requirements of this subchapter may be certified as proof of financial responsibility under this subchapter.

(b) This subchapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of vehicles not owned by the insured. (May 25, 1954, 68 Stat. 136, ch. 222, § 59; 1973 Ed., § 40-475.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

§§ 40-460 to 40-464. Surety bond — Proof of financial responsibility; lien against scheduled real estate; right of action; deposit of money with Mayor — Proof of financial responsibility; limits on application.

Repealed. Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.

Legislative history of Law 4-155. — See note to § 40-403.

§ 40-465. Owner of a motor vehicle may give proof for others.

The owner of a motor vehicle may give proof of financial responsibility on behalf of his employee or a member of his immediate family or household in lieu of the furnishing of proof by any said person. The furnishing of such proof shall permit such person to operate only a motor vehicle covered by such proof. The Mayor shall endorse appropriate restrictions on the face of the license held by such person, or may issue a new license containing such restrictions. (May 25, 1954, 68 Stat. 137, ch. 222, § 65; 1973 Ed., § 40-481.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-466. Substitution of proof.

The Mayor shall consent to the cancellation of any certificate of insurance upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this subchapter. (May 25, 1954, 68 Stat. 137, ch. 222, § 66; 1973 Ed., § 40-482; Sept. 18, 1982, D.C. Law 4-155, § 14(c)(4), 29 DCR 3491.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Legislative history of Law 4-155. — See note to § 40-403.

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-467. Requirement of other proof of financial responsibility; prior proof; suspension.

Whenever any proof of financial responsibility filed under the provisions of this subchapter no longer fulfills the purposes for which required, the Mayor shall, for the purpose of this subchapter, require other proof as required by this subchapter and shall suspend the license and registration pending the filing of such other proof. (May 25, 1954, 68 Stat. 137, ch. 222, § 67; 1973 Ed., § 40-483.)

Section references. — This section is referred to in §§ 40-436, 40-437 and 40-446.

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-468. Cancellation of certificate; waiver of filing proof.

The Mayor shall upon request consent to the immediate cancellation of any certificate of insurance, or the Mayor shall waive the requirements of filing proof, in any of the following events:

(1) In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(2) In the event the person who has given proof surrenders his license and registration to the Mayor. (May 25, 1954, 68 Stat. 137, ch. 222, § 68; 1973 Ed., § 40-484; Sept. 18, 1982, D.C. Law 4-155, § 14(c)(5), 29 DCR 3491.)

Section references. — This section is referred to in §§ 40-436, 40-437, 40-446 and 40-485.

Legislative history of Law 4-155. — See note to § 40-403.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-469. Transfer of registration to defeat purpose of subchapter.

(a) If an owner's registration has been suspended hereunder, such registration shall not be transferred nor the vehicle in respect to which such registration was issued registered in any other name until the Mayor is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this subchapter.

(b) Nothing in this section shall in anywise affect the rights of any conditional vendor, chattel mortgagee or lessor of such a vehicle registered in the name of another as owner who becomes subject to the provisions of this subchapter.

(c) The Mayor shall suspend the registration of any vehicle transferred in violation of the provisions of this section. (May 25, 1954, 68 Stat. 138, ch. 222, § 69; 1973 Ed., § 40-485.)

Cross references. — As to review of suspension, see § 40-404.

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia.

These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-470. Surrender of license and registration.

Any person whose license or registration shall have been suspended under any provision of this subchapter, or whose policy of insurance, when required under this subchapter, shall have been cancelled or terminated, shall immediately return his license and registration to the Mayor. If any person shall fail to return to the Mayor the license or registration as provided herein, the Mayor shall forthwith direct any police officer to secure possession thereof and to return the same to the Mayor. (May 25, 1954, 68 Stat. 138, ch. 222, § 70; 1973 Ed., § 40-486; Sept. 18, 1982, D.C. Law 4-155, § 14(c)(6), 29 DCR 3491.)

Section references. — This section is referred to in § 40-474.

Legislative history of Law 4-155. — See note to § 40-403.

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§§ 40-471, 40-472. Failure to report accident; penalty; false information or forged signature in accident report; forged evidence of proof of financial responsibility; false swearing.

Repealed. Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.

Legislative history of Law 4-155. — See note to § 40-403.

§ 40-473. Operating motor vehicle when license suspended or revoked.

Repealed. Sept. 14, 1982, D.C. Law 4-145, § 11(b), 29 DCR 3138.

Legislative history of Law 4-145. — See note to § 40-717.1.

§ 40-474. Failure to return license or registration; penalty.

Any person willfully failing to return license or registration as required in § 40-470 shall be fined not more than \$500 or imprisoned not to exceed 30 days, or both. (May 25, 1954, 68 Stat. 139, ch. 222, § 74; 1973 Ed., § 40-490.)

§ 40-475. Penalty for violations of subchapter.

Any person who shall violate any provision of this subchapter for which no penalty is otherwise provided shall be fined not more than \$500 or imprisoned not more than 90 days, or both. (May 25, 1954, 68 Stat. 139, ch. 222, § 75; 1973 Ed., § 40-491.)

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter", where applicable, in this section.

§ 40-476. Jurisdiction of the Superior Court of the District of Columbia as to prosecutions for violations of provisions of subchapter.

All prosecutions for violations of this subchapter shall be in the Superior Court of the District of Columbia, in the name of the District of Columbia, by the Corporation Counsel or any of his assistants. (May 25, 1954, 68 Stat. 139, ch. 222, § 76; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 40-492.)

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

§ 40-477. Vehicles insured under other laws; exception.

Repealed. Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.

Legislative history of Law 4-155. — See note to § 40-403.

§ 40-478. Self-insurers.

(a) Any person in whose name more than 25 vehicles are registered in the District of Columbia may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Mayor as provided in subsection (b) of this section.

(b) The Mayor may, in his discretion, upon the application of such a person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person. Such certificate may be issued authorizing a person to act as a self-insurer for either property damage or bodily injury, or both, and shall provide for the payment of benefits to the extent required by the Compulsory/No-Fault Motor Vehicle Insurance Act of 1982.

(c) Upon not less than 5 days notice and a hearing pursuant to such notice, the Mayor may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within 30 days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance. (May 25, 1954, 68 Stat. 139, ch. 222, § 79; 1973 Ed., § 40-494; Sept. 18, 1982, D.C. Law 4-155, § 14(c)(7), 29 DCR 3491.)

Section references. — This section is referred to in §§ 35-2102 and 40-453.

Legislative history of Law 4-155. — See note to § 40-403.

References in text. — The “Compulsory/No-Fault Motor Vehicle Insurance Act of 1982,” referred to at the end of the last sentence in subsection (b) of this section, is D.C. Law 4-155.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Smith v. Washington Metro. Area Transit Auth.*, App. D.C., 631 A.2d 387 (1993).

§ 40-479. Appropriations authorized.

There is hereby authorized to be appropriated out of the General Fund of the District of Columbia such sums as may be necessary to carry out the provisions of this subchapter. (May 25, 1954, 68 Stat. 139, ch. 222, § 80; 1973 Ed., § 40-495.)

Editor’s notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting

text of Chapter 4 as subchapter I, “subchapter” has been substituted for “chapter” in this section.

§ 40-480. Subchapter not applied retroactively.

This subchapter shall not apply with respect to any accident, or judgment arising therefrom, or violation of the motor vehicle laws of the District of Columbia, occurring prior to May 25, 1955. (May 25, 1954, 68 Stat. 140, ch. 222, § 83; 1973 Ed., § 40-496.)

Editor’s notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, “subchapter”

has been substituted for “chapter” in this section.

Cited in *Orban v. State Auto. Ass’n*, App. D.C., 127 A.2d 143 (1956).

§ 40-481. Provisions of subchapter not to prevent other processes provided by law.

Nothing in this subchapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law. (May 25, 1954, 68 Stat. 140, ch. 222, § 84; 1973 Ed., § 40-497.)

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting

text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

§ 40-482. Interpretation of subchapter.

This subchapter shall be so interpreted and construed as to effectuate its general purpose to make it uniform with similar laws enacted by the several states. (May 25, 1954, 68 Stat. 140, ch. 222, § 85; 1973 Ed., § 40-498.)

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

Purpose of subchapter. — This subchapter is a remedial statute designed to protect, so far as possible, innocent persons injured by negligent operation of motor vehicles. *Government Employees Ins. Co. v. Stonewall Cas. Co.*, App. D.C., 301 A.2d 72 (1973).

§ 40-483. Effect of Reorganization Plan No. 5 of 1952.

Where any provision of this subchapter, or any amendment made by this subchapter, refers to an office or agency abolished by Reorganization Plan No. 5 of 1952, such reference shall be deemed to be the office, agency, or officer exercising the functions of the office or agency so abolished. (May 25, 1954, 68 Stat. 139, ch. 222, § 81; 1973 Ed., § 40-498a.)

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting

text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

§ 40-484. Severability of provisions.

If any part or parts of this subchapter shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this subchapter. (May 25, 1954, 68 Stat. 140, ch. 222, § 86; 1973 Ed., § 40-498b.)

Editor's notes. — Because of the codification of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting

text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

§ 40-485. Effect of subchapter on prior law.

(a) This subchapter shall in no respect be considered as a repeal of the Traffic Acts of the District of Columbia, except as specifically provided herein, but shall be construed as supplemental thereto.

(b) The Owners' Financial Responsibility Act of the District of Columbia, is hereby repealed except with respect to any accident or judgment arising therefrom occurring prior to the effective date of this subchapter. Section 40-468 shall govern as to the duration of proof of financial responsibility in all cases arising under the aforementioned Act. (May 25, 1954, 68 Stat. 139, ch. 222, § 82; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 7; 1973 Ed., § 40-498c.)

References in text. — The Owners' Financial Responsibility Act of the District of Columbia, referred to in the first sentence of subsection (b), is the Act of May 3, 1935, 49 Stat. 166, ch. 89.

Editor's notes. — Because of the codifica-

tion of D.C. Law 5-46 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 4 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

Subchapter II. Senior Citizen Motor Vehicle Accident Prevention Course Certification.

§ 40-491. Findings.

The Council of the District of Columbia finds that:

(1) Drivers 55 years of age and older are an increasing segment of the District of Columbia's motorists whose unique driving habits justify the development of driver improvement training programs specifically designed for senior citizens.

(2) Statistics indicate that although the number of annual miles driven declines for drivers 55 years of age and older, motor vehicle accident rates for senior citizens increase when measured by accidents per mile driven, and highlight the need for measures to improve highway safety by educating older drivers about their specific driving customs and experiences.

(3) Senior citizen motor vehicle safety and driver improvement programs will improve the driving skills of older motorists, will update their driving knowledge, and will result in greater driving safety in the District of Columbia. (Feb. 9, 1984, D.C. Law 5-46, § 2, 30 DCR 5638.)

Cross references. — As to general duties of Superintendent of Insurance, see § 35-102.

As to required compulsory/no-fault motor vehicle insurance, see § 35-2103.

As to availability of required and optional compulsory/no-fault motor vehicle insurance and benefits, see § 35-2106.

As to administration of motor vehicle safety responsibility, see § 40-403.

As to authority of Council and Mayor concerning regulation of traffic, see § 40-703.

Legislative history of Law 5-46. — Law

5-46, Senior Citizen Motor Vehicle Accident Prevention Course Certification Act of 1983, was introduced in Council and assigned Bill No. 5-30, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on September 20, 1983, and October 4, 1983, respectively. Signed by the Mayor on October 21, 1983, it was assigned Act No. 5-72 and transmitted to both Houses of Congress for its review.

§ 40-492. Approval of courses; certificate of completion.

(a) The Department of Transportation shall establish criteria and guidelines for the approval of motor vehicle accident prevention courses ("course") for individuals 55 years of age and older.

(b) An approved course shall provide not less than 8 hours of actual classroom or field driving instruction.

(c) An individual who successfully completes an approved course shall be issued a certificate of completion by the organization operating the course. (Feb. 9, 1984, D.C. Law 5-46, §§ 3, 4, 30 DCR 5638.)

Section references. — This section is referred to in § 40-493.

Legislative history of Law 5-46. — See note to § 40-491.

§ 40-493. Insurance discounts.

(a) All insurance companies authorized to sell motor vehicle insurance in the District of Columbia shall provide a discount in the amount charged for a motor vehicle insurance policy to individuals 55 years of age and older who have successfully completed an approved course.

(b) Any schedule of rates or any rating plan for a motor vehicle insurance policy approved by the Department of Insurance shall provide for an appropriate 2-year discount in the premiums for individuals 55 years of age and older who have successfully completed an approved course.

(c) The requirement in subsection (b) of this section shall be satisfied if an insurance company's schedule of rates or rating plan provides a discount in the premiums for all individuals 55 years of age and older based upon factors related to the individual's age.

(d) A certificate of completion issued pursuant to § 40-492(c) shall qualify an individual for the discount set forth in subsection (b) of this section during the 2-year period immediately following issuance of the certificate.

(e) An individual shall complete an approved course every 2 years in order to continue to be eligible for a discount in the premiums of a motor vehicle policy of insurance provided pursuant to subsection (b) of this section. (Feb. 9, 1983, D.C. Law 5-46, §§ 5, 6, 30 DCR 5638.)

Legislative history of Law 5-46. — See note to § 40-491.

Subchapter III. Vehicle Cover Requirements.

§ 40-499.1. Vehicle cover requirement; penalty.

(a) No person shall operate any vehicle on the public roadways of the District of Columbia carrying loose debris or loose cargo that could be dislodged from the vehicle without covering and restraining the loose debris or loose cargo so as to render the material immobile. The provisions of this section shall not apply when loose debris or loose cargo is loaded so that the height of the cargo against the sides of the vehicle container does not extend above a point 6 inches below the top of the vehicle container and no portion of the load extends above the top of the vehicle container.

(b) The penalty for violating this section shall be a civil fine not to exceed \$500.

(c) Nothing in this section shall be construed to repeal the requirements or penalties provided in 18 DCMR 2503.2, 20 DCMR 605.1(c), and 24 DCMR 1007. (May 10, 1988, D.C. Law 7-108, § 2, 35 DCR 2179.)

Legislative history of Law 7-108. — Law 7-108, "District of Columbia Vehicle Cover Requirement Act of 1988," was introduced in Council and assigned Bill No. 7-339, which was referred to the Committee on Public Works. The Bill was adopted on first and second read-

ings on February 16, 1988 and March 1, 1988, respectively. Signed by the Mayor on March 16, 1988, it was assigned Act No. 7-150 and transmitted to both Houses of Congress for its review.

CHAPTER 5. MOTOR VEHICLE OPERATORS; IMPLIED CONSENT TO BLOOD-ALCOHOL CONTENT TESTS.

Sec.	Sec.
40-501. Definitions.	40-504. Availability of test information.
40-502. Implied consent to blood-alcohol content or blood-drug content tests; administration; accidents.	40-505. Test refusal; penalty; incapacitated person; use of evidence.
40-503. Blood tests; physician or nurse to withdraw blood; additional test by private physician.	40-506. License revocation or denial order; hearing.
	40-507. Judicial review.

§ 40-501. Definitions.

As used in this chapter:

- (1) The term “Mayor” means the Mayor of the District, or his designated agent.
- (2) The term “District” means the District of Columbia.
- (3) The term “license” means any operator’s permit or any other license or permit to operate a motor vehicle issued under the laws of the District, including:
 - (A) Any temporary or learner’s permit;
 - (B) The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and
 - (C) Any nonresident’s operating privilege.
- (4) The term “nonresident” means every person who is not a resident of the District.
- (5) The term “nonresident’s operating privilege” means the privilege conferred upon a nonresident by the laws of the District relating to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in the District.
- (6) The term “police officer” means an officer or member of the Metropolitan Police force, the United States Park Police force, or the Capitol Police force, or any other person actually and officially engaged in the performance of police duties in connection with guarding the property of the United States or of the District.
- (7) The term “specimen” means that quantity of a person’s blood, urine, or breath necessary to conduct a chemical test to determine blood-alcohol content or the blood-drug content.
- (8) The term “motor vehicle” means all vehicles propelled by internal-combustion engines, electricity, or steam. The term “motor vehicle” shall not include battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.
- (9) The term “chemical test” means a test which measures or relates to the properties or actions of chemicals. (Oct. 21, 1972, 86 Stat. 1016, Pub. L. 92-519, § 1; 1973 Ed., § 40-1001; Sept. 14, 1982, D.C. Law 4-145, § 4(a), 29 DCR 3138; Mar. 15, 1985, D.C. Law 5-176, § 5, 32 DCR 748; May 5, 1992, D.C. Law 9-96, § 3(a), 38 DCR 7274.)

Effect of amendments. — D.C. Law 9-96 added (9).

Legislative history of Law 4-145. — Law 4-145 was introduced in Council and assigned Bill No. 4-389, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-213 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-176. — Law 5-176 was introduced in Council and assigned Bill No. 5-382, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-96. — Law 9-96, the "Comprehensive Anti-Drunk Driving Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-34, which was referred to the Committee on the Judiciary. The

Bill was adopted on first and second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-98 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *District of Columbia v. McConnell*, App. D.C., 464 A.2d 126 (1983); *District of Columbia v. Washington*, 118 WLR 1573 (Super. Ct. 1990).

§ 40-502. Implied consent to blood-alcohol content or blood-drug content tests; administration; accidents.

(a) Any person, other than one described in subsection (b) of this section, who operates a motor vehicle within the District shall be deemed to have given his or her consent, subject to the provisions of this chapter, to 2 chemical tests of the person's blood, urine, or breath, for the purpose of determining blood-alcohol content or the blood-drug content. The arresting police officer or any other appropriate law enforcement officer shall elect which chemical test shall be administered to the person; provided, that the person may object to a particular test on valid religious or medical grounds. The tests shall be administered at the direction of a police officer who, having arrested such person for violation of law, has reasonable grounds to believe the person to have been operating or in physical control of a motor vehicle within the District while that person's blood contains .10% or more, by weight, of alcohol, or .48 micrograms or more of alcohol are contained in 1 milliliter of that person's breath, consisting of substantially alveolar air, or that person's urine contains .13% or more, by weight, of alcohol, or while under the influence of intoxicating liquor or any drug or any combination thereof, or while the person's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor, or while that person's blood, urine, or breath contains any measurable amount of alcohol if the person is under 21 years of age.

(b) Any person who operates or who is in physical control of a motor vehicle within the District and who is involved in a motor vehicle accident shall submit, subject to the provisions of this chapter, to 2 chemical tests of the

person's blood, urine, or breath for the purpose of determining blood-alcohol content or blood-drug content whenever a police officer arrests such person for a violation of law and has reasonable grounds to believe such person to have been operating or in physical control of a motor vehicle within the District while that person's blood contains .10% or more, by weight, of alcohol, or .48 micrograms or more of alcohol are contained in 1 milliliter of that person's breath, consisting of substantially alveolar air, or that person's urine contains .13% or more, by weight, of alcohol, or while under the influence of an intoxicating liquor or any drug or any combination thereof, or while the ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor, or while that person's blood, urine, or breath contains any measurable amount of alcohol if the person is under 21 years of age. The arresting police officer or other appropriate law enforcement officer shall elect which chemical test shall be administered to the person; provided, that the person may object to a particular test on valid religious or medical grounds. (Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 2; 1973 Ed., § 40-1002; Sept. 14, 1982, D.C. Law 4-145, § 4(b), (f), 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 7, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 3(b), 38 DCR 7274; May 24, 1994, D.C. Law 10-122, § 6(a), 41 DCR 1658.)

Section references. — This section is referred to in § 40-505.

Legislative history of Law 4-145. — See note to § 40-501.

Legislative history of Law 4-174. — Law 4-174 was introduced in Council and assigned Bill No. 4-398, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-257 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-96. — See note to § 40-501.

Legislative history of Law 10-12. — D.C. Law 10-12, the "Underage Drinking Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-261. The Bill was adopted on first and second readings on May 4, 1993, and June 1, 1993, respectively. Signed by the Mayor on June 16, 1993, it was assigned Act No. 10-40 and transmitted to both Houses of Congress for its review. D.C. Law 10-12 became effective on September 11, 1993.

Legislative history of Law 10-122. — Law 10-122, the "Alcoholic Beverage Control Act and Rules Reform Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-207, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 21, 1994, it was assigned Act No. 10-214 and transmitted to both Houses of Congress for its re-

view. D.C. Law 10-122 became effective on May 24, 1994.

Alcohol content at time of operation. — The focus of all the drunk driving laws is the time of operation. *District of Columbia v. Bennou*, 116 WLR 2685 (Super. Ct. 1988).

Choice to take the chemical test must be an informed one. *District of Columbia v. Onley*, App. D.C., 399 A.2d 84 (1979).

Effect of failure to submit to breathalyzer test. — Since the necessity for express consent to submit to the breathalyzer test has been eliminated and there is no longer a right to refuse to take the test, the failure of the accused to submit to the test is properly admitted into evidence. *District of Columbia v. McConnell*, App. D.C., 464 A.2d 126 (1983).

District's motion requesting permission to comment on defendant's refusal to submit to chemical tests. — See *District of Columbia v. Murray*, 110 WLR 869 (Super. Ct. 1982).

Police refusal to let defendant consult counsel before deciding whether to take breath-alcohol tests did not violate his rights under the Sixth Amendment. *District of Columbia v. Lynn*, 111 WLR 2149 (Super. Ct. 1983).

Warning required. — The officer administering the test must warn the motorist of the consequences of refusal. *District of Columbia v. Onley*, App. D.C., 399 A.2d 84 (1979).

Operator involved in collision resulting in death or bodily injury did not have option of refusing chemical testing and objecting to introduction of test results against him on ground that he was incapable of refusal

when specimen was extracted. *Murray v. United States*, App. D.C., 358 A.2d 314 (1976).

Undue force used in arrest did not taint consent to breath test administered 1 hour later by different officers. — The conduct of an arresting officer in using undue force in the arrest of a person suspected of driving while intoxicated did not taint the suspect's consent to the administration of a breath test almost 1 hour later by officers not involved in the arrest. *District of Columbia v. Clark*, App. D.C., 468 A.2d 961 (1983).

Forcible taking of blood held acceptable. — Where a defendant twice refused to take the breath test, then said he would take the blood test, then refused to take the blood test and demanded he be given the breath test, the forcible taking of blood from defendant was acceptable, and the defendant's final request to take the breath test was unreasonable. *Marshall v. District of Columbia*, App. D.C., 498 A.2d 190 (1985).

Proof of tests at trial. — While this chapter

authorizes, under certain circumstances, the performance of 2 types of chemical tests, it does not mandate proof of both tests at trial. *Murray v. United States*, App. D.C., 358 A.2d 314 (1976).

Proof of refusal. — In "implied consent" cases, while the government has the statutory right to introduce evidence of refusal to be tested, when the accused contests the validity of the "refusal," a pre-trial hearing must be held, at which the government will have the burden of proving the accused's refusal by a preponderance of the evidence as a prerequisite for introducing at trial evidence of such putative refusal to show consciousness of guilt. *District of Columbia v. Kaiser*, 125 WLR 1753 (Super. Ct. 1997).

Cited in *United States v. O'Brien*, 116 WLR 2117 (Super. Ct. 1988); *District of Columbia v. Washington*, 118 WLR 1573 (Super. Ct. 1990); *Clark v. United States*, App. D.C., 593 A.2d 186 (1991).

§ 40-503. Blood tests; physician or nurse to withdraw blood; additional test by private physician.

Only a physician or registered nurse acting at the request of a police officer may withdraw blood for the purpose of determining the alcoholic content or the drug content thereof. This limitation shall not apply to the taking of a breath or urine specimen. The person tested may, in addition to submitting to the 2 tests administered at the direction of a police officer, also submit to a chemical test or tests administered to him by a physician, registered nurse, or other person of his own choosing who is qualified to administer such test or tests. The failure or inability to obtain an additional test by a person shall not preclude the admission of the tests taken at the direction of a police officer. (Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 3; 1973 Ed., § 40-1003; Sept. 14, 1982, D.C. Law 4-145, § 4(c), (f), 29 DCR 3138.)

Legislative history of Law 4-145. — See note to § 40-501.

Undue force used in arrest did not taint consent to breath test administered 1 hour later by different officers. — The conduct of an arresting officer in using undue force in the arrest of a person suspected of driving while intoxicated did not taint the suspect's consent to the administration of a breath test almost 1 hour later by officers not involved in the arrest. *District of Columbia v. Clark*, App. D.C., 468 A.2d 961 (1983).

Literal compliance with blood test procedure. — Where police officers detect the odor of liquor on a motorist's breath before a request was made that a sample of his blood be drawn, and the hospital delivered a blood specimen, extracted in accordance with hospital emergency procedures, to police only after detec-

tive's investigation prompted him to make such specific request, it would have been unreasonable to require an attending nurse or physician to draw additional blood at the direction of the police officer simply to comply literally with this chapter; that particular sequence of events did not render this chapter inapplicable where it was obvious that blood test procedure had law enforcement motivations and consequences. *Murray v. United States*, App. D.C., 358 A.2d 314 (1979).

Medical technician has no authority under this section to withdraw blood from an accused to determine drug content. — The language of both this section and the Implied Consent Law, as well as their legislative histories, indicates that a medical technician has no authority to withdraw blood from an accused for the purpose of determining its

drug content, and where officer who withdrew blood from the defendant was neither a physician nor a registered nurse, the government failed to follow the procedure required by this section. *District of Columbia v. Washington*, 118 WLR 1573 (Super. Ct. 1990).

Where park policeman drew blood from defendant in violation of this section, good faith exception to exclusion of unlawfully obtained evidence did not apply because rather than complying with the explicit procedures within a

statutory scheme, park police violated a core requirement of the Implied Consent Law. Under the objective standard, the park police had more than adequate notice that the use of a medical technician was unreasonable in light of the clear language of the Implied Consent Law requiring that a physician or a registered nurse must withdraw blood, and there was no prior approval of the officer's conduct by a neutral judicial officer. *District of Columbia v. Washington*, 118 WLR 1573 (Super. Ct. 1990).

§ 40-504. Availability of test information.

Full information concerning the tests administered under this chapter shall be made available to the person from whom a specimen was obtained. Prior to administering the tests the police officer shall advise the operator of the motor vehicle about the requirements of this chapter. (Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 4; 1973 Ed., § 40-1004.)

Cited in *District of Columbia v. Kaiser*, 125 WLR 1753 (Super. Ct. 1997).

§ 40-505. Test refusal; penalty; incapacitated person; use of evidence.

(a) If a person under arrest refuses to submit to chemical testing as provided in § 40-502(a) he shall be informed that failure to submit to such test will result in the revocation of his license. If such person, after having been so informed, still refuses to submit to chemical testing, no test shall be given, but the Mayor, upon receipt of a sworn report of the police officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways while the individual's blood contains .10% or more, by weight, of alcohol, or .48 micrograms or more of alcohol were contained in one milliliter of the individual's breath, consisting of substantially alveolar air, or defendant's urine contains .13% or more, by weight, of alcohol, or while under the influence of intoxicating liquor or any drug or any combination thereof, or while the person's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor, or while that person's blood, urine, or breath contains any measurable amount of alcohol if the person is under 21 years of age, and that the person had refused to submit to the 2 tests, shall revoke his license for a period of 12 months; or if the person is a resident without a license to operate a motor vehicle in the District, the Mayor shall deny to the person the issuance of a license for a period of 12 months after the date of the alleged violation, subject to review as hereinafter provided.

(b) Any person who is unconscious, or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by § 40-502 and the 2 tests may be given; except, that if such person thereafter objects to the use of the evidence so secured, such evidence shall not be used and the license of such person shall be revoked, or, if he is a

resident without a license, no license shall be issued to him for a period of 12 months.

(c) If the person under arrest refuses to submit to the test, or subsequently exercises the right to object to the use of the test results pursuant to subsection (b) of this section, evidence of such refusal shall be admissible in any civil or criminal proceeding arising as a result of the acts alleged to have been committed by the person prior to the arrest. (Oct. 21, 1972, 86 Stat. 1018, Pub. L. 92-519, § 5; 1973 Ed., § 40-1005; Sept. 14, 1982, D.C. Law 4-145, § 4(d), (f), 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 8, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 3(c), 38 DCR 7274; May 24, 1994, D.C. Law 10-122, § 6(b), 41 DCR 1658.)

Legislative history of Law 4-145. — See note to § 40-501.

Legislative history of Law 4-174. — See note to § 40-502.

Legislative history of Law 9-96. — See note to § 40-501.

Legislative history of Law 10-12. — See note to § 40-502.

Legislative history of Law 10-122. — See note to § 40-502.

Mayor authorized to issue rules. — See note to § 40-717.1.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

This section no longer provides unqualified right to refuse to submit to breathalyzer test. District of Columbia v. McConnell, App. D.C., 464 A.2d 126 (1983).

“Otherwise in a condition rendering him incapable of refusal” refers to a person’s lack of capacity to make an informed and intelligent waiver of a known right. District of Columbia v. Onley, App. D.C., 399 A.2d 84 (1979).

Notice of consequences of refusal. — The clear mandate of the law is that the arresting officer must expressly inform an arrestee of the consequences of his refusal to follow through on his implied consent to take the chemical tests. District of Columbia v. Kaiser, 125 WLR 1753 (Super. Ct. 1997).

Effect of failure to submit to breathalyzer test. — Since the necessity for

express consent to submit to the breathalyzer test has been eliminated and there is no longer a right to refuse to take the test, the failure of the accused to submit to the test is properly admitted into evidence. District of Columbia v. McConnell, App. D.C., 464 A.2d 126 (1983).

Refusal to take a blood alcohol test could properly be considered against defendant as evincing consciousness of guilt. Stevenson v. District of Columbia, App. D.C., 562 A.2d 622 (1989).

Although this section no longer provides an unqualified right to refuse to submit to a breathalyzer test, it still permits a limited right to do so, as long as the accused is made aware of the consequences of that refusal before finally determining to make it. District of Columbia v. Kaiser, 125 WLR 1753 (Super. Ct. 1997).

Person who was unconscious when tested may revoke the consent implied by the section and have the test results excluded as evidence in any enforcement proceeding. District of Columbia v. Onley, App. D.C., 399 A.2d 84 (1979).

Subsection (b) inapplicable in case involving death or personal injury. — The evidentiary exclusion of subsection (b) of this section, when considered in light of this chapter’s overall purposes, does not apply in cases involving death or personal injury. Murray v. United States, App. D.C., 358 A.2d 314 (1976).

Undue force used in arrest did not taint consent to breath test administered 1 hour later by different officers. — The conduct of an arresting officer in using undue force in the arrest of a person suspected of driving while intoxicated did not taint the suspect’s consent to the administration of a breath test almost 1 hour later by officers not involved in the arrest. District of Columbia v. Clark, App. D.C., 468 A.2d 961 (1983).

District’s motion requesting permission to comment on defendant’s refusal to submit to chemical tests. — See District of Columbia v. Murray, 110 WLR 869 (Super. Ct. 1982).

Proof of refusal. — In “implied consent” cases, while the government has the statutory

right to introduce evidence of refusal to be tested, when the accused contests the validity of the "refusal," a pre-trial hearing must be held, at which the government will have the burden of proving the accused's refusal by a preponderance of the evidence as a prerequisite for introducing at trial evidence of such puta-

tive refusal to show consciousness of guilt. *District of Columbia v. Kaiser*, 125 WLR 1753 (Super. Ct. 1997).

Cited in *Eilers v. District of Columbia Bureau of Motor Vehicles Servs.*, App. D.C., 583 A.2d 677 (1990).

§ 40-506. License revocation or denial order; hearing.

(a) Whenever any license has been revoked or denied under the provisions of this chapter, the reasons therefor shall be set forth in the order of revocation or denial, as the case may be. Such order shall take effect 5 days after service of notice on the person whose license is to be revoked or who is to be denied a license unless such person shall have filed within such period written application with the Mayor for a hearing. Such hearing by the Mayor shall cover the issues of:

(1) Whether a police officer had reasonable grounds to believe such person had been driving or was in actual control of a motor vehicle upon the public street or highway while the person's blood or breath contains .10 percent or more, by weight, of alcohol, or the person's urine contains .13 percent or more, by weight, of alcohol, or while under the influence of intoxicating liquor or any drug or any combination thereof, or while the person's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor; and

(2) Whether such person, having been placed under arrest, refused to submit to the test or tests, after having been informed of the consequences of such refusal.

(b) If, following the hearing provided in subsection (a) of this section, the Mayor shall sustain the order of revocation, the same shall become effective immediately. (Oct. 21, 1972, 86 Stat. 1018, Pub. L. 92-519, § 6; 1973 Ed., § 40-1006; Sept. 14, 1982, D.C. Law 4-145, § 4(e), (f), 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 9, 29 DCR 5753.)

Legislative history of Law 4-145. — See note to § 40-501.

Legislative history of Law 4-174. — See note to § 40-502.

Mayor authorized to issue rules. — See note to § 40-717.1.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *District of Columbia v. Kaiser*, 125 WLR 1753 (Super. Ct. 1997).

§ 40-507. Judicial review.

Any person aggrieved by a final order of the Mayor revoking his license or denying him a license under the authority of this chapter, may obtain a review thereof in accordance with § 1-1510. (Oct. 21, 1972, 86 Stat. 1018, Pub. L. 92-519, § 7; 1973 Ed., § 40-1007.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of govern-

ment were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Eilers v. District of Columbia Bureau of Motor Vehicles Servs.*, App. D.C., 583 A.2d 677 (1990).

CHAPTER 6. TRAFFIC ADJUDICATION.

Subchapter I. Purposes; Definitions; Establishment; Hearing Examiners; Sanctions; Time Computations; Regulations.

Sec.

- 40-601. Purposes.
- 40-602. Definitions.
- 40-603. Bureau of Traffic Adjudication and Bureau of Parking and Enforcement established.
- 40-604. Hearing examiners.
- 40-605. Monetary sanctions.
- 40-606. Time computation.
- 40-607. Regulations.
- 40-608. Report to Council.

Subchapter II. Moving Infractions.

- 40-611. Applicability.
- 40-612. Exceptions.
- 40-613. Exception for serious offenders.
- 40-614. Notice of infraction.
- 40-615. Answer.
- 40-616. Hearing.

Subchapter III. Parking, Standing, Stopping and Pedestrian Infractions.

Sec.

- 40-621. Applicability.
- 40-622. Exceptions for serious offenders.
- 40-623. Notice of infraction.
- 40-624. Civil liability.
- 40-624.1. Fleet adjudication program.
- 40-625. Answer.
- 40-626. Hearing.
- 40-627. Identification of pedestrian offenders.

Subchapter IV. Administrative Review.

- 40-631. Appeals boards.
- 40-632. Right of appeal.
- 40-633. Scope of review.
- 40-634. Time limitation.
- 40-635. Judicial review.

Subchapter V. Severability; Effective Date.

- 40-641. Severability.
- 40-642. Effective date.

*Subchapter I. Purposes; Definitions; Establishment; Hearing Examiners; Sanctions; Time Computations; Regulations.***§ 40-601. Purposes.**

It is the intent of the Council of the District of Columbia (hereinafter referred to as the "Council") in the adoption of this chapter to decriminalize and to provide for the administrative adjudication of certain violations of Title 32 of the District of Columbia Rules and Regulations (Motor Vehicle Regulations for the District of Columbia), and certain offenses codified in Title 40 of the District of Columbia Code, in the Highways and Traffic Regulations of the District of Columbia, and in Chapter III of Title 14 of the District of Columbia Rules and Regulations (relating to the operation of taxicabs), and to provide for the civilian enforcement of parking infractions, and thereby to establish a uniform and more expeditious system and continue to assure an equitable system for the disposition of traffic offenses. (1973 Ed., § 40-1101; Sept. 12, 1978, D.C. Law 2-104, § 101, 25 DCR 1275.)

Section references. — This section is referred to in §§ 1-2466, 40-703, and 40-712.

Legislative history of Law 2-104. — Law 2-104 was introduced in Council and assigned Bill No. 2-195, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-215 and transmitted to both Houses of Congress for its review.

Editor's notes. — Title 18 of the DCMR (Vehicles and Traffic) (June, 1987) has replaced Title 32 of the District of Columbia Rules and Regulations (Motor Vehicle Regulations for the District of Columbia).

Title 18A of the DCMR (Taxicabs and Vehicles for Hire) (October, 1987) has replaced Title 14 of the District of Columbia Rules and Regulations (relating to operation of taxicabs).

Legislative intent to create exception to "contested case" definition. — There is no

conflict between the Administrative Procedure Act (Chapter 15 of Title 1) and the Traffic Adjudication Act, as it is clear that the legislative intent in the latter was to create an exception to the former's definition of "contested case" in § 1-1502(8). *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981).

Double jeopardy can never attach in a Bureau of Traffic Adjudication proceed-

ing, because Bureau of Traffic Adjudication offenses are civil, rather than criminal, violations. *Purcell v. United States*, App. D.C., 594 A.2d 527 (1991).

Cited in *Stowell v. District of Columbia Dep't of Transp.*, App. D.C., 514 A.2d 438 (1986); *Gilles v. Touchstone*, 676 F. Supp. 341 (D.D.C. 1987); *Adam A. Weschler & Son v. Klank*, App. D.C., 561 A.2d 1003 (1989).

§ 40-602. Definitions.

For the purpose of this chapter:

(1) The term "Department" means the District of Columbia Department of Transportation.

(2) The term "Director" means the Director of the District of Columbia Department of Transportation.

(3) The term "District" means the District of Columbia.

(4) The term "infraction" means any conduct subject to administrative adjudication under the provisions of this chapter and with respect to which the Corporation Counsel does not commence a proceeding in the Superior Court of the District of Columbia.

(5) The term "lessor" means any owner of a vehicle engaged in the business of renting or leasing vehicles to be used or operated in the District.

(5a) The term "motor vehicle" means all vehicles propelled by an internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include traction engines, road rollers, vehicles propelled only upon stationary rails or tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.

(6) The term "operator" means:

(A) Any person, corporation, firm, agency, association, organization, federal, state or local governmental agency in the business of renting or leasing vehicles to be used or operated in the District;

(B) An owner who operates his own vehicle; or

(C) A person who operates a vehicle owned by another.

(7) The term "owner" means:

(A) Any person, corporation, firm, agency, association, organization, federal, state or local governmental agency or other authority or other entity having the property of or title to a vehicle used or operated in the District; or

(B) Any registrant of a vehicle used or operated in the District; or

(C) Any person, corporation, firm, agency, association, organization, federal, state or local government agency or authority or other entity in the business of renting or leasing vehicles to be used or operated in the District. (1973 Ed., § 40-1102; Sept. 12, 1978, D.C. Law 2-104, § 102, 25 DCR 1275; Mar. 15, 1985, D.C. Law 5-176, § 4, 32 DCR 748.)

Legislative history of Law 2-104. — See note to § 40-601.

Legislative history of Law 5-176. — See note to § 40-208.

Transfer of functions. — The functions of

the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 40-603. Bureau of Traffic Adjudication and Bureau of Parking and Enforcement established.

There are hereby established within the Department of Transportation of the District of Columbia a Bureau of Traffic Adjudication which shall be headed by an Assistant Director of Transportation for Administrative Adjudication and a Bureau of Parking and Enforcement which shall be headed by an Assistant Director for Parking and Enforcement. (1973 Ed., § 40-1103; Sept. 12, 1978, D.C. Law 2-104, § 103, 25 DCR 1275.)

Legislative history of Law 2-104. — See note to § 40-601.

Transfer of functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Authority concerning paid tickets. — There is no authority for the Bureau of Traffic Adjudication to reopen the issue of liability and grant an infraction hearing on a traffic ticket that has been resolved by payment. *Kufdom v. District of Columbia Bureau of Motor Vehicle Servs.*, App. D.C., 543 A.2d 340 (1988).

§ 40-604. Hearing examiners.

(a) The Director shall appoint and prescribe the duties of a Chief Hearing Examiner and other hearing examiners as are necessary to implement the provisions of this chapter. The Chief Hearing Examiner and each hearing examiner appointed pursuant to this section shall serve as career service employees in accordance with § 1-608.1.

(b) The hearing examiners, in addition to the powers granted them by Chapter IX of Title 32 of the District of Columbia Rules and Regulations, shall have the following powers:

(1) To determine in prescribed cases whether a member of the Metropolitan Police Department or the Department of Transportation shall be called as a witness in an adjudication pursuant to subchapters II and III of this chapter;

(2) To impose sanctions for infractions under subchapter II of this chapter including:

(A) Monetary fines and penalties;

(B) The required attendance at traffic school; and

(C) The suspension of operators' permits pending the payment of monetary fines and penalties or the successful completion of traffic school;

(3) To impose monetary fines and penalties for infractions under subchapter III of this chapter;

(4)(A) To permit the payment of monetary fines and penalties in excess of \$50 in monthly installments over a period not greater than 6 months. In the case of a moving infraction, the hearing examiner may suspend the respondent's operators' permit if the fines and penalties have not been paid upon termination of the installment period or if the respondent defaults on 2 consecutive installments.

(B) Such suspension shall take effect upon service of a notice of suspension upon the respondent, by personal service, by leaving such notice at his recorded address with a person of suitable age and discretion residing therein or by certified mail sent to his recorded address and shall remain in effect until the fines and penalties are paid; provided, that refusal to accept

personal service or delivery of certified mail shall be the equivalent of personal service or receipt of certified mail, if immediately upon advice of such refusal, the Director causes a copy of the notice to be sent to the respondent by regular mail with a statement that, despite such refusal, the suspension will go into effect 5 days from the date the notice was sent by regular mail;

(5) To suspend the imposition of traffic violation points (other than those based upon offenses listed in § 40-612) conditioned upon:

(A) Good driving behavior; and

(B) The successful completion of traffic school or other rehabilitative measures; and

(6) To adjudicate notices of civil infractions issued to taxicab operators or owners pursuant to 31 DCMR 825 including the power to:

(A) Preside over a hearing in a contested matter;

(B) Compel the attendance of a witness by subpoena, administer an oath, take testimony of a witness under oath, and dismiss, rehear, or continue a case; and

(C) Issue a proposed decision including the imposition of a fine for a civil infraction set forth in 31 DCMR 825. (1973 Ed., § 40-1104; Sept. 12, 1978, D.C. Law 2-104, § 104, 25 DCR 1275; Mar. 14, 1984, D.C. Law 5-66, § 2, 31 DCR 214; May 22, 1984, D.C. Law 5-83, § 2, 31 DCR 1683; Sept. 10, 1992, D.C. Law 9-148, § 2, 39 DCR 4915; Mar. 17, 1993, D.C. Law 9-206, § 2, 40 DCR 12; Apr. 9, 1997, D.C. Law 11-198, § 504(a), 43 DCR 4569.)

Cross references. — As to creation of career service, see § 1-608.1.

As to violations, penalties and adjudications under the Compulsory No-Fault Motor Vehicle Insurance Act, see § 35-2113.

Section references. — This section is referred to in §§ 35-2113 and 40-301.

Effect of amendments. — D.C. Law 9-206 in (a) in the first sentence deleted “such” before “other”; deleted the former second sentence; and in the second sentence deleted “during their terms,” following “serve”.

D.C. Law 11-198 added (b)(6).

Temporary amendment of section. — Section 504(a) of D.C. Law 11-226 added (b)(6).

Emergency act amendments. — For temporary amendment of section, see § 504(a) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 504(a) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 504(a) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 11-302 provides for application of the act.

Section 1001 of D.C. Act 11-429 provides for application of the act.

Section 1001 of D.C. Act 12-2 provides for application of the act.

Legislative history of Law 2-104. — See note to § 40-601.

Legislative history of Law 5-66. — Law 5-66 was introduced in Council and assigned Bill No. 5-350. The Bill was adopted on first and second readings on December 20, 1983. Signed by the Mayor on January 11, 1984, it was assigned Act No. 5-99 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-83. — Law 5-83 was introduced in Council and assigned Bill No. 5-220, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 28, 1984, and March 13, 1984, respectively. Signed by the Mayor on March 29, 1984, it was assigned Act No. 5-119 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-148. — Law 9-148, the “Bureau of Traffic Adjudication Hearing Examiner Temporary Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-521. The Bill was adopted on first and second readings on May 6, 1992, and June 2, 1992, respectively. Signed by the Mayor on June 19, 1992, it was assigned Act No. 9-228 and transmitted to both Houses of Congress for its review. D.C. Law 9-148 became effective on September 10, 1992.

Legislative history of Law 9-206. — Law 9-206, the “Bureau of Traffic Adjudication Hearing Examiner Amendment Act of 1992,”

was introduced in Council and assigned Bill No. 9-539, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on November 4, 1992, and December 1, 1992, respectively. Signed by the Mayor on December 18, 1992, it was assigned Act No. 9-335 and transmitted to both Houses of Congress for its review. D.C. Law 9-206 became effective on March 17, 1993.

Legislative history of Law 11-198. — Law 11-198, the “Fiscal Year 1997 Budget Support Act of 1996,” was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective April 9, 1997.

Legislative history of Law 11-226. — Law 11-226, the “Fiscal Year 1997 Budget Support

Temporary Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-896. The Bill was adopted on first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on November 27, 1996, it was assigned Act No. 11-453 and transmitted to both Houses of Congress for its review. D.C. Law 11-226 became effective on April 9, 1997.

Application of Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Transfer of functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Cited in *Gilles v. Touchstone*, 676 F. Supp. 341 (D.D.C. 1987); *Purcell v. United States*, App. D.C., 594 A.2d 527 (1991).

§ 40-605. Monetary sanctions.

(a) The maximum monetary sanctions that may be imposed under this chapter shall be as follows:

(1) The civil fine for an infraction shall be an amount equal to the collateral or bond established for the offense, equivalent to the infraction, by the Board of Judges of the Superior Court of the District of Columbia on the day before September 12, 1978. The Mayor may modify this schedule of fines by an order which shall be presented to the Council. The order shall be effective 45 days after the Mayor presents it to the Council unless the Council adopts a resolution either disapproving or approving the Mayor’s order, and does so during the review period of 45 days, which shall not include Saturdays, Sundays, legal holidays, and days of recess for the Council.

(2) In addition to the civil fine, the following penalties may be imposed:

(A) In the case of a person receiving a notice of infraction who fails to answer such notice within the time specified by § 40-615 (d) or 40-625 (d), a penalty equal to the amount of the civil fine;

(B) In the case of a person receiving a notice of infraction who fails to answer such notice by the close of business on the date set for the hearing or who answers but fails without good cause to appear at such hearing, with respect to infractions under subchapter II of this chapter, a penalty equal to twice the amount of the civil fine and, with respect to infractions under subchapter III of this chapter, a penalty equal to the amount of the civil fine plus \$5.

(b) A respondent may pay such fines and penalties by use of credit cards approved by the Director. The Director may pay a reasonable percentage of monies collected to private agencies for the collection of fines, penalties and fees. (1973 Ed., § 40-1105; Sept. 12, 1978, D.C. Law 2-104, § 105, 25 DCR 1275; Aug. 1, 1985, D.C. Law 6-15, § 9, 32 DCR 3570.)

Cross references. — As to violations, penalties and adjudications under the Compulsory No-Fault Motor Vehicle Insurance Act, see § 35-2113.

Section references. — This section is referred to in §§ 35-2113, 40-301, 40-615, 40-616, 40-625, and 40-626.

Legislative history of Law 2-104. — See note to § 40-601.

Legislative history of Law 6-15. — Law 6-15 was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

Where person does not receive ticket notifying him of infraction, imposition of the penalty for that infraction is not authorized by this section. *Staudaher v. District of Columbia*, 113 WLR 2493 (Super. Ct. 1985).

Forfeiture of security. — The theory behind the “post and forfeiture” process is that in cases of most petty offenses, the defendant is permitted to “post” a security upon release to ensure his return to court for a prospective trial, but then in lieu of appearing for trial, he may then “forfeit” the collateral as a kind of vicarious fine paid, without admitting or adjudicating any criminal or other liability. *District of Columbia v. Baylor*, 125 WLR 1665 (Super. Ct. 1997).

The legislative branch has established the principle of “posting and forfeiting” collateral, but has left it to the judicial branch, which sets bonds as part of its intrinsic powers and duties, to promulgate a schedule of bond and collateral amounts for various petty offenses and infractions. *District of Columbia v. Baylor*, 125 WLR 1665 (Super. Ct. 1997).

Cited in *Barnett v. United States*, App. D.C., 525 A.2d 197 (1987); *Purcell v. United States*, App. D.C., 594 A.2d 527 (1991).

§ 40-606. Time computation.

In computing any period of time prescribed or allowed by this chapter, the day of the act, event or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. (1973 Ed., § 40-1106; Sept. 12, 1978, D.C. Law 2-104, § 106, 25 DCR 1275.)

Legislative history of Law 2-104. — See note to § 40-601.

§ 40-607. Regulations.

The Director is authorized to promulgate regulations necessary to carry out the purposes of this chapter. (1973 Ed., § 40-1107; Sept. 12, 1978, D.C. Law 2-104, § 107, 25 DCR 1275.)

Section references. — This section is referred to in § 40-642.

Legislative history of Law 2-104. — See note to § 40-601.

Cited in *Purcell v. United States*, App. D.C., 594 A.2d 527 (1991).

§ 40-608. Report to Council.

By June 30th of each year, the Mayor shall submit to the Council a report on parking and traffic enforcement for the previous calendar year. The report shall include, but not be limited to, the following:

- (1) The number of persons hired as hearing examiners:
 - (A) The level of compensation for each hearing examiner;

(B) The length of time each hearing examiner has served in that capacity; and

(C) The qualifications for hearing examiners;

(2) The number of notices of infraction issued:

(A) The number of notices of infraction issued for moving infractions;

(B) The number of notices of infraction issued for parking, standing, stopping and pedestrian infractions; and

(C) The number of notices of infraction issued by each agency authorized to issue notices of infraction;

(3) The number of answers filed for moving infractions:

(A) The number of “admit” answers filed for moving infractions:

(i) The number of hearings held for respondents who admit the commission of moving infractions; and

(ii) The number of suspensions and revocations of respondents who admit the commission of moving infractions;

(B) The number of “admit with explanation” answers filed for moving infractions; the number of suspensions and revocations of respondents who admit with explanation the commission of a moving infraction;

(C) The number of “deny” answers filed for moving infractions:

(i) The number of determinations of liability of respondents who deny the commission of moving infractions;

(ii) The number of dismissals of respondents who deny the commission of moving infractions; and

(iii) The number of suspensions and revocations of respondents who deny the commission of moving infractions;

(D) The number of suspensions for failure to answer notices of infraction; and

(E) The number of suspensions for failure to appear at a hearing;

(4) The number of answers filed for parking, standing, stopping and pedestrian infractions:

(A) The number of “admit” answers filed for parking, standing, stopping and pedestrian infractions;

(B) The number of “admit with explanation” answers filed for parking, standing, stopping and pedestrian infractions; and

(C) The number of “deny” answers filed for parking, standing, stopping and pedestrian infractions:

(i) The number of determinations of liability of respondents who deny the commission of parking, standing, stopping and pedestrian infractions; and

(ii) The number of dismissals of respondents who deny the commission of parking, standing, stopping and pedestrian infractions;

(5) The number of notices of infraction for which sanctions are imposed:

(A) The number of notices of infraction for which a civil fine is imposed;

(B) The number of notices of infraction for which a penalty is imposed; and

(C) The number of notices of infraction for which attendance at traffic school is required;

(6) The number of notices of infraction issued to lessors covered under § 40-624:

- (A) The penalties and fines imposed for infractions under § 40-624;
- (B) The penalties and fines actually paid under § 40-624;
- (C) The number of outstanding infractions under § 40-624; and
- (D) The amount of fines and penalties outstanding under § 40-624;
- (7) The number of appeals filed with the appeals boards:
 - (A) The number of decisions set aside by appeals boards;
 - (B) The number of decisions affirmed by appeals boards;
 - (C) The list of attorneys available for service on appeals boards;
 - (D) The list of citizens available for service on appeals boards; and
 - (E) A list of each appeals board appointed by the Director;
- (8) The number of appeals filed with the Superior Court of the District of Columbia:
 - (A) The number of decisions set aside by the Superior Court of the District of Columbia; and
 - (B) The number of decisions affirmed by the Superior Court of the District of Columbia;
- (9) The number of appeals filed with the District of Columbia Court of Appeals:
 - (A) The number of decisions set aside by the District of Columbia Court of Appeals; and
 - (B) The number of decisions affirmed by the District of Columbia Court of Appeals;
- (10) The number of vehicles towed and booted:
 - (A) The number of vehicles towed;
 - (B) The number of vehicles booted;
 - (C) The average cost of each tow; and
 - (D) The average cost of each booting; and
- (11) The total revenues generated by this chapter:
 - (A) The total collected in fines and penalties;
 - (B) The total collected in towing fees; and
 - (C) The total collected in booting fees. (1973 Ed., § 40-1108; Sept. 12, 1978, D.C. Law 2-104, § 108, 25 DCR 1275.)

Legislative history of Law 2-104. — See note to § 40-601.

Subchapter II. Moving Infractions.

§ 40-611. Applicability.

Notwithstanding any other provision of law, all violations of statutes, regulations, executive orders or rules relating to the operation of any vehicle in the District, including rules issued pursuant to Chapter 33 of Title 6, except those violations covered by subchapter III of this chapter or those violations excepted by §§ 40-612 and 40-613, shall be processed and adjudicated pursuant to the provisions of this subchapter. All violations of regulations issued by the Capitol Police Board, pursuant to § 9-127(a), that if committed outside the United States Capitol grounds would be covered by this section shall be

processed and adjudicated pursuant to the provisions of this subchapter. (1973 Ed., § 40-1109; Sept. 12, 1978, D.C. Law 2-104, § 201, 25 DCR 1275; Oct. 1, 1992, D.C. Law 9-173, § 2, 39 DCR 5834; May 15, 1993, D.C. Law 9-272, § 203(a), 40 DCR 796.)

Legislative history of Law 2-104. — See note to § 40-601.

Legislative history of Law 9-173. — Law 9-173, the “Traffic Adjudication and Motor Carrier Safety Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-501, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 23, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 23, 1992, it was assigned Act No. 9-271 and transmitted to both Houses of Congress for its review. D.C. Law 9-172 became effective on October 1, 1992.

Legislative history of Law 9-272. — Law 9-272, the “Criminal and Juvenile Justice Reform Amendment Act of 1992,” was introduced

in Council and assigned Bill No. 9-374, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-401 and transmitted to both Houses of Congress for its review. D.C. Law 9-272 became effective on May 15, 1993.

Enforcement. — The District of Columbia Taxicab Commission, rather than the Bureau of Traffic Adjudication, was intended to be the agency charged with enforcing laws prohibiting unlicensed hacking. *Onabiyi v. District of Columbia Taxicab Comm’n*, App. D.C., 557 A.2d 1317 (1989).

§ 40-612. Exceptions.

The provisions of this subchapter shall not apply to the following violations, which shall continue to be prosecuted as criminal offenses:

(1) Any felony or any misdemeanor for which the provision prohibiting the same is not codified in: (A) Title 40 of the District of Columbia Code; (B) Title 14 of the District of Columbia Rules and Regulations; (C) Title 32 of the District of Columbia Rules and Regulations; or (D) Highways and Traffic Regulations of the District of Columbia; provided, that upon the Mayor complying with § 1-1602, and transmitting to the Council a complete and accurate draft of a District of Columbia Municipal Code, this paragraph shall stand amended upon publication of such Municipal Code to substitute in subparagraphs (B), (C) and (D) of this paragraph, the appropriate titles of such Municipal Code;

(2) Violation of § 40-712(b);

(3) Violation of § 40-713;

(4) Violation of § 40-716(a);

(5) Violation of § 40-716(b);

(6) Violation of § 40-718;

(7) Violation of § 40-105;

(8) Violation of § 40-301(d);

(9) Violation of § 40-302(e);

(10) Violation of Commissioners’ Order No. 57-1086, dated June 11, 1957 (Highway and Traffic Regulations, § 22(d)) (driving at a speed greater than 30 miles per hour in excess of the legal speed limit);

(11) Violation of § 2.401(1) of Title 32 of the District of Columbia Rules and Regulations (failure or refusal to surrender an operator’s license which has been suspended, revoked or cancelled);

(12) Commission of any offense contained in chapters VII or VIII of Title 32 of the District of Columbia Rules and Regulations;

(13) Violation of § 11.701(a) of Title 32 of the District of Columbia Rules and Regulations (tampering with a locked or secured bicycle);

(14) Violation of § 2.501 of Title 32 of the District of Columbia Rules and Regulations (acting as a driving school instructor without a license);

(15) Violation of § 2.801 of Title 32 of the District of Columbia Rules and Regulations (operating a school bus without a permit);

(16) Violation of § 5.201 of Title 32 of the District of Columbia Rules and Regulations (carrying on or conducting the business of a dealer without a registration);

(17) Violation of subsection (d) of Commissioners' Order No. 66-535, dated April 21, 1966 (Highways and Traffic Regulations, § 87(d)) (unauthorized use of emergency parking permits);

(18) Violation of § 40-301(c);

(19) Violation of 18 DCMR § 2000.2; and

(20) Violation of § 40-627(b). (1973 Ed., § 40-1110; Sept. 12, 1978, D.C. Law 2-104, § 202, 25 DCR 1275; Oct. 8, 1981, D.C. Law 4-36, § 4(a), 28 DCR 3383; Nov. 17, 1981, D.C. Law 4-52, § 3(f), 28 DCR 4348.)

Section references. — This section is referred to in §§ 40-604 and 40-611.

Legislative history of Law 2-104. — See note to § 40-601.

Legislative history of Law 4-36. — See note to § 40-301.

Legislative history of Law 4-52. — Law 4-52 was introduced in Council and assigned Bill No. 4-270, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 28, 1981 and September 15, 1981, respectively. Signed by the Mayor on September 25, 1981, it was assigned Act No. 4-89 and transmitted to both Houses of Congress for its review.

Editor's notes. — Title 18 of the DCMR (Vehicles and Traffic) (June, 1987) has replaced Title 32 of the District of Columbia Rules and Regulations, referred to in (1)(c), and (11) through (16).

Violations of § 40-726. — Although violations of § 40-726 are not specifically excepted by this section from the Bureau of Traffic Adjudication's jurisdiction, their omission appears to have been an oversight on the part of the Council, since § 40-726 was enacted several years after this section. *Purcell v. United States*, App. D.C., 594 A.2d 527 (1991).

Whether or not § 40-726 is listed in this section, the Bureau of Traffic Adjudication lacks the power to order the imprisonment that § 40-726 prescribes as a punishment for its violation, and lacks jurisdiction even to entertain charges brought under § 40-726. *Purcell v. United States*, App. D.C., 594 A.2d 527 (1991).

Cited in *Hill v. United States*, App. D.C., 512 A.2d 269 (1986); *Barnett v. United States*, App. D.C., 525 A.2d 197 (1987).

§ 40-613. Exception for serious offenders.

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter shall not apply to a person alleged to have committed an infraction who, during the 18-month period immediately preceding the date of the infraction, has been assessed 12 or more traffic points pursuant to § 2.305 of Title 32 of the District of Columbia Rules and Regulations. Such person shall be subject to criminal prosecution by the Corporation Counsel for such offense in the Superior Court of the District of Columbia and, upon conviction, shall be punished by a fine not to exceed \$300 or imprisonment of up to 10 days, or both, in addition to any penalties imposed for driving after suspension or revocation.

(b) The Director shall promptly inform the Corporation Counsel of an infraction by any person who has accumulated 12 or more traffic points pursuant to subsection (a) of this section. If the Corporation Counsel asserts jurisdiction over such person, he may be prosecuted without respect to the provisions of this chapter; provided, that if the Corporation Counsel affirmatively declines to take jurisdiction or does not assert jurisdiction over such offender within 15 calendar days of his receipt of notification by the Director of a violation by such person, such violation shall be adjudicated in the manner of civil infractions pursuant to this subchapter.

(c) A person, over whom the Corporation Counsel asserts jurisdiction pursuant to this section, shall be notified that his infraction shall be subject to criminal prosecution. Such notification shall be sent by the Corporation Counsel by certified mail directed to the recorded address of such person. No actions or statements of the respondent made in compliance or attempted compliance with this chapter before the receipt of such notice, including but not limited to admissions or admissions with explanation, shall be admissible in any such criminal proceeding. (1973 Ed., § 40-1111; Sept. 12, 1978, D.C. Law 2-104, § 203, 25 DCR 1275.)

Section references. — This section is referred to in § 40-611.

Legislative history of Law 2-104. — See note to § 40-601.

Editor's notes. — Title 18 of the DCMR (Vehicles and Traffic) (June, 1987) has replaced Title 32 of the District of Columbia Rules and Regulations, referred to in (a).

§ 40-614. Notice of infraction.

(a) The notice of infraction shall be the summons and complaint for the purposes of this subchapter. The Director shall prescribe the form of the notice of infraction and shall establish procedures for the proper administrative controls over the dispersal thereof. The notice of infraction may be the same as the uniform traffic violation notice.

(b) The notice of infraction shall contain information advising the person to whom it is issued of the manner in which and the time within which he may answer the infraction alleged in the notice.

(c) The notice of infraction shall advise the person to whom it is issued that his failure to answer the notice of infraction within 15 calendar days from the date of issuance or greater period established by the Director by regulation shall by operation of law result in a suspension of his District operator's permit or, in the case of a person who is not a resident of the District, his privilege to drive within the District, pending his compliance with § 40-615.

(d) If a hearing examiner determines that a notice of infraction is defective on its face, he shall enter an order dismissing the notice of infraction and promptly notify the person to whom it was issued. (1973 Ed., § 40-1112; Sept. 12, 1978, D.C. Law 2-104, § 204, 25 DCR 1275.)

Legislative history of Law 2-104. — See note to § 40-601.

Generally. — A traffic ticket — notice of infraction — is a summons and a complaint, a person served with such a notice must answer

within 15 days, and when a person denies, or admits with explanation, the infraction alleged, he or she is entitled to a hearing. *Kuflom v. District of Columbia Bureau of Motor Vehicle Servs.*, App. D.C., 543 A.2d 340 (1988).

§ 40-615. Answer.

(a) In answer to a Notice of Infraction, a person to whom the notice was issued may:

(1) Admit, by payment of the civil fine, the commission of the infraction; or

(2) Deny the commission of the infraction.

(b) Failure to answer within the time prescribed in subsection (d) of this section shall be deemed an admission to the commission of the infraction.

(c) Any person appearing before a hearing examiner who refuses to enter an answer shall be deemed to have denied the infraction. Payment of fine for the infraction shall be deemed a finding of liability. A person admitting that an infraction occurred shall, at the same time he submits his answer, pay the civil fine and any additional penalties established pursuant to § 40-605, as may be due for failure to answer within the time required by subsection (d) of this section. In such case, such person need not appear at the hearing, unless the commission of such infraction would subject him to the suspension or revocation of his license or privilege to drive pursuant to Chapter II of Title 32 of the District of Columbia Rules and Regulations in which case he shall answer in person.

(d)(1) A person to whom a notice of infraction has been issued must answer within 15 calendar days of the date the notice was issued or within a greater period of time as prescribed by the Director by regulation. If a person fails to answer such notice within this period, such person's operators' permit, in the case of a resident of the District or other person with a District operators' permit, or such person's privilege to drive within the District, in the case of a nonresident or resident licensed in another jurisdiction, shall by operation of law be suspended until such person answers the notice.

(2) A notice of such suspension shall be personally served upon the respondent or left at his recorded address with a person of suitable age and discretion residing therein or shall be mailed by certified mail to him at his recorded address. Such suspension shall take effect 5 days after the personal service or the receipt of certified mail; provided, that refusal to accept personal service or delivery of certified mail shall be the equivalent of personal service or receipt of certified mail, if, immediately upon advice of such refusal, the Director causes a copy of the notice to be sent to the respondent by regular mail with a statement that, despite such refusal, the suspension will go into effect 5 days from the date the notice was sent by regular mail.

(3) A person who fails to answer within the prescribed period referred to in subsection (a) (1) of this section shall answer by personal appearance unless permitted by regulation by the Director to answer by other means. (1973 Ed., § 40-1113; Sept. 12, 1978, D.C. Law 2-104, § 205, 25 DCR 1275; Apr. 9, 1997, D.C. Law 11-198, § 504(b), 43 DCR 4569.)

Section references. — This section is referred to in §§ 40-605, 40-614 and 40-616.

Effect of amendments. — D.C. Law 11-198 rewrote (a) and (b); and added the first two sentences in (c).

Temporary amendment of section. — Section 504(b) of D.C. Law 11-226 rewrote (a) and (b); and added the first two sentences in (c).

Section 1001 of D.C. Law 11-226 provided that Titles I, II, III, V, and VI of the act shall

apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 401(a) of the Omnibus Budget Support Emergency Act of 1993 (D.C. Act 10-32, June 3, 1993, 40 DCR 3658).

Section 601 of D.C. Act 10-32 provides for application of the act.

For temporary amendment of section, see § 504(b) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 504(b) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 504(b) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 11-302 provides for application of the act.

Section 1001 of D.C. Act 11-429 provides for application of the act.

Section 1001 of D.C. Act 12-2 provides for application of the act.

Legislative history of Law 2-104. — See note to § 40-601.

Legislative history of Law 11-198. — See note to § 40-604.

Legislative history of Law 11-226. — See note to § 40-604.

Application of Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Editor's notes. — Chapters 1 and 3 of Title 18 of the DCMR (Vehicles and Traffic) (June,

1987) has replaced Chapter II of Title 32 of the District of Columbia Rules and Regulations, referred to in (c).

Admission of infraction. — When a person admits an infraction, he or she need not appear at a hearing to adjudicate it; upon receipt of an admission of infraction, it is treated as an adjudication that an infraction has been committed. *Kufлом v. District of Columbia Bureau of Motor Vehicle Servs.*, App. D.C., 543 A.2d 340 (1988).

Payment of ticket without explanation. — Payment of traffic ticket without explanation is an admission of liability which triggers the assignment of appropriate points under municipal regulations, subjecting the driver to the possibility of suspension or revocation of a driver's license. *Kufлом v. District of Columbia Bureau of Motor Vehicle Servs.*, App. D.C., 543 A.2d 340 (1988).

Effect of payment of a traffic fine in tort litigation. — Whatever effect the payment of a fine following receipt of a traffic ticket may have within the framework of the administration of the traffic laws, its effect in tort litigation is not dealt with by statute or regulation. *Morris v. Rasque*, App. D.C., 591 A.2d 459 (1991).

Assuming without deciding that the fact of payment of the fine for running a red light was admissible at all, the defendant was entitled to explain the circumstances. *Morris v. Rasque*, App. D.C., 591 A.2d 459 (1991).

Hearing. — A traffic ticket — notice of infraction — is a summons and a complaint, a person served with such a notice must answer within 15 days, and when a person denies, or admits with explanation, the infraction alleged, he or she is entitled to a hearing. *Kufлом v. District of Columbia Bureau of Motor Vehicle Servs.*, App. D.C., 543 A.2d 340 (1988).

§ 40-616. Hearing.

(a) Each hearing for the adjudication of a traffic infraction pursuant to this subchapter shall be held before a hearing examiner in accordance with Chapter IX of Title 32 of the District of Columbia Rules and Regulations except as provided by this chapter. The burden of proof shall be on the District and no infraction shall be established except by clear and convincing evidence.

(b) If a person to whom a notice of infraction has been issued fails to appear at a hearing where he is required to do so, the hearing examiner may suspend that person's license or privilege to drive until such person appears at a hearing or pays a civil fine pursuant to § 40-615(c). Such suspension shall take effect and notice shall be given in accordance with § 40-615(d).

(c) The police officer issuing the notice of infraction shall appear at the hearing of a case wherein the respondent has denied the commission of the

infraction. The police officer issuing the notice of infraction shall not be required to attend the hearing of a case wherein the respondent has admitted or has admitted with explanation the commission of the infraction unless:

(1) The respondent requests the presence of the officer at the same time that he answers to the infraction and the hearing examiner determines that the testimony of such officer would assist his determination of the appropriate sanction to impose; or

(2) The hearing examiner decides to require such presence.

(d) After due consideration of the evidence and arguments presented, the hearing examiner shall determine whether the infraction has been established. Where the infraction is not established, an order dismissing the charge shall be entered. Where a determination is made that an infraction has been established or where an answer admitting the commission of the infraction or admitting the commission of the infraction with explanation has been received, an appropriate order shall be entered in the Department's records.

(e) An order, entered pursuant to a determination that an infraction has been established or pursuant to the receipt of an answer admitting the infraction or admitting the infraction with explanation, shall be civil in nature but shall be treated as an adjudication that an infraction has been committed for the purposes of this chapter and for the purposes of the assessment of traffic points pursuant to Chapter II of Title 32 of the District of Columbia Rules and Regulations.

(f) The hearing examiner may impose as sanctions for such infraction:

(1) A civil fine and applicable penalties as prescribed pursuant to § 40-605;

(2) The required completion of traffic school; or

(3) Both of the preceding sanctions.

(g) In making the determination whether an infraction is established, the hearing examiner shall not consider the traffic record of the respondent, unless so requested by the respondent. However, the hearing examiner shall consider the respondent's traffic record in determining the appropriate sanction to impose.

(h) The hearing examiner may stay the imposition of any sanction imposed pending administrative review pursuant to part F of Chapter IX of Title 32 of the District of Columbia Rules and Regulations and subchapter IV of this chapter; provided, that the respondent posts a security in the amount of the civil fine and any penalties and, in the case where the sanction includes the suspension or revocation of his license to drive, surrenders his operator's permit to the Bureau of Traffic Adjudication. If a respondent surrenders his operator's permit, a temporary permit shall be issued pursuant to the standards set forth in § 9.202(b)(2) of Title 32 of the District of Columbia Rules and Regulations.

(i) All civil fines and other monies collected pursuant to the provisions of this title shall be paid into the General Fund of the District. (1973 Ed., § 40-1114; Sept. 12, 1978, D.C. Law 2-104, § 206, 25 DCR 1275.)

Legislative history of Law 2-104. — See note to § 40-601.

Editor's notes. — Chapter 10 of Title 18 of the DCMR (Vehicles and Traffic) (June, 1987) has replaced Chapter IX of Title 32 of the District of Columbia Rules and Regulations, referred to in (a) and (h).

Chapter 3 of Title 18 of the DCMR (Vehicles and Traffic) (June, 1987) has replaced the provisions governing assessment of traffic points formerly contained in Chapter II of Title 32 of the District of Columbia Rules and Regulations, referred to in (e).

Where person does not receive ticket notifying him of infraction, imposition of the penalty for that infraction is not authorized by § 40-605. *Staudaher v. District of Columbia*, 113 WLR 2493 (Super. Ct. 1985).

Notice of infraction. — A notice of infraction is not sufficient to establish an infraction by clear and convincing evidence, as required in subsection (a). *Ibrahim v. District of Columbia*, 119 WLR 873 (Super. Ct. 1991).

The provision of 18 DCMR 3012.6 (1987) with reference to a notice of infraction constituting prima facie evidence is not consistent with the

statutory requirement for clear and convincing evidence, where a violation is contested. *Ibrahim v. District of Columbia*, 119 WLR 873 (Super. Ct. 1991).

Effect of payment of a traffic fine in tort litigation. — Whatever effect the payment of a fine following receipt of a traffic ticket may have within the framework of the administration of the traffic laws, its effect in tort litigation is not dealt with by statute or regulation. *Morris v. Rasque*, App. D.C., 591 A.2d 459 (1991).

Stay of revocation hearing pending outcome of infraction hearing. — It was abuse of discretion to deny the request for stay of a revocation hearing pending the outcome of an infraction hearing challenging the traffic tickets on which the revocation hearing was based. *Kufom v. District of Columbia Bureau of Motor Vehicle Servs.*, App. D.C., 543 A.2d 340 (1988).

Cited in *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981); *Gilles v. Touchstone*, 676 F. Supp. 341 (D.D.C. 1987); *Malik v. District of Columbia*, 117 WLR 105 (Super. Ct. 1989); *Purcell v. United States*, App. D.C., 594 A.2d 527 (1991).

Subchapter III. Parking, Standing, Stopping and Pedestrian Infractions.

§ 40-621. Applicability.

Notwithstanding any other provision of law, all violations of statutes, regulations, executive orders or rules relating to parking, standing, stopping or pedestrian offenses within the District shall be processed and adjudicated pursuant to the provisions of this subchapter, except as provided in §§ 40-612(19) and 40-622. All violations of regulations issued by the Capitol Police Board, pursuant to § 9-127(a), that if committed outside the United States Capitol grounds would be covered by this section shall be processed and adjudicated pursuant to the provisions of this subchapter. (1973 Ed., § 40-1115; Sept. 12, 1978, D.C. Law 2-104, § 301, 25 DCR 1275; May 15, 1993, D.C. Law 9-272, § 203(b), 40 DCR 796; May 24, 1996, D.C. Law 11-130, § 4, 43 DCR 1570.)

Effect of amendments. — D.C. Law 11-130 inserted “§ 612(19) and” in the first sentence.

Legislative history of Law 2-104. — See note to § 40-601.

Legislative history of Law 9-272. — See note to § 40-611.

Legislative history of Law 11-130. — Law 11-130, the “Safe Streets Anti-Prostitution Amendment Act of 1996,” was introduced in

Council and Assigned Bill No. 11-439, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 6, 1996, and March 5, 1996, respectively. Signed by the mayor on March 15, 1996, it was assigned Act No. 11-237 and transmitted to both Houses of Congress for its review. D. C. Law 11-130 became effective on May 24, 1996.

§ 40-622. Exceptions for serious offenders.

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter shall not apply to a person alleged to have committed a parking, standing, or stopping infraction who, during the 18 months immediately preceding the date of the infraction, has been assessed in excess of \$750 in fines, including any penalties imposed by law for failure to timely pay such fines. Such person shall be subject to criminal prosecution by the Corporation Counsel for such offense in the Superior Court of the District of Columbia and, upon conviction, shall be punished by a fine not to exceed \$300 or imprisonment of up to 10 days, or both, for each infraction.

(b) The Director shall promptly inform the Corporation Counsel of an infraction by any person who has accumulated in excess of \$750 in fines pursuant to subsection (a) of this section. If the Corporation Counsel asserts jurisdiction over such person, he may be prosecuted without respect to the provisions of this chapter; provided, that if the Corporation Counsel affirmatively declines to take jurisdiction or does not assert jurisdiction over such offender within 15 calendar days of his receipt of notification by the Director of a violation by such person, such violation shall be adjudicated as a civil infraction pursuant to this subchapter.

(c) A person over whom the Corporation Counsel asserts jurisdiction pursuant to this section shall be notified that his infraction shall be treated as a criminal matter. Such notification shall be sent by the Corporation Counsel by certified mail directed to the recorded address of such person. No actions or statements of the respondent made in compliance or attempted compliance with this chapter before the receipt of such notice, including but not limited to admissions or admissions with explanation, shall be admissible in any such criminal proceeding. (1973 Ed., § 40-1116; Sept. 12, 1978, D.C. Law 2-104, § 302, 25 DCR 1275.)

Section references. — This section is referred to in § 40-621.

Legislative history of Law 2-104. — See note to § 40-601.

§ 40-623. Notice of infraction.

(a) The notice of infraction shall be the summons and complaint for the purposes of this subchapter. The Director shall prescribe the form of the notice of infraction and shall establish procedures for the proper administrative controls over the dispersal thereof. The notice of infraction may be the same as the uniform traffic violation notice.

(b) The notice of infraction shall contain information advising the person to whom it is issued of the manner in which and the time within which he may answer to the infraction alleged in the notice. Such notice shall also contain a warning to advise the person cited that failure to answer in the manner and time provided shall result in additional monetary penalties and that failure to appear at the hearing shall be deemed an admission of liability and that a default judgment may be entered thereon. A duplicate of each notice of infraction shall be served on the person to whom it is issued as provided in subsection (c) of this section. The original or a facsimile thereof shall be filed

with the Department and retained by the Department and shall be deemed a record kept in the ordinary course of business and shall be prima facie evidence of the facts contained therein.

(c) A notice of infraction shall be served personally upon the operator of a vehicle who is present at the time of service and his name, together with the plate designation and the plate type as shown by the registration plates of said vehicle and the make or model of such vehicle, shall be inserted therein. If the operator is not present, the notice of infraction shall be served upon the owner of the vehicle by affixing such notice to such vehicle in a conspicuous place, by inserting the word “owner” in the space provided for identification of such person and by noting the plate designation and plate type as shown by the registration plates of such vehicle together with the make or model of such vehicle. Service of the notice of infraction or a duplicate thereof by affixation, as herein provided, shall have the same force and effect and shall be subject to the same penalties for the disregard thereof as though the notice of infraction was personally served on the owner and operator of the vehicle.

(d) For purposes of this section, an operator of a vehicle who is not the owner thereof but who uses or operates such vehicle with the permission of the owner, express or implied, shall be deemed to be the agent of such owner to receive notices of infraction, whether personally served on such operator or served by affixation, and service made in either manner shall also be deemed to be lawful service upon such owner.

(e) If a hearing examiner determines that a notice of infraction is defective on its face, he shall enter an order dismissing the notice of infraction and promptly notify the person to whom it was issued. (1973 Ed., § 40-1117; Sept. 12, 1978, D.C. Law 2-104, § 303, 25 DCR 1275.)

Legislative history of Law 2-104. — See note to § 40-601.

Plate type and designation. — This section leaves it to the Director of the Department of Transportation to prescribe the form of notice of infraction (parking or traffic ticket), and while both plate type and plate designation must be noted on the ticket, they need not be noted in separate locations rather than together as part of the plate designation including both type (by letter) and number. *Avis*

Rent-A-Car Sys. v. District of Columbia, App. D.C., 679 A.2d 492 (1996).

Where vehicles registered in another state carried plates not distinguished by type, parking/traffic ticket issuer had neither means nor duty to identify and insert plate type on the ticket, nor was he required to write “plate type unknown” or similar words on the ticket. *Avis Rent-A-Car Sys. v. District of Columbia*, App. D.C., 679 A.2d 492 (1996).

§ 40-624. Civil liability.

(a) The operator of a vehicle shall be primarily liable for the civil penalties imposed pursuant to this subchapter. Subject to the provisions of subsections (b) and (c) of this section, the owner of the vehicle, even if not the operator thereof, shall also be liable therefor, unless he can show that such vehicle was used without his permission, express or implied. An owner who pays any civil fine or penalties pursuant to this subchapter shall have the right to recover same from the operator and shall have a cause of action against the operator of the vehicle for such amount paid.

(b) The lessor of a vehicle shall not be liable for fines or penalties imposed for an infraction pursuant to this subchapter if:

(1) Prior to the infraction, the lessor has filed with the Bureau the license plate number and state of registration of the vehicle to which the notice of infraction was issued; and

(2) Within 30 days after receiving notice from the Bureau of the date and time of an infraction, as well as other information contained in the original notice of infraction, the lessor submits to the Bureau the correct name and address of the person to whom the vehicle identified in the notice of infraction was rented or leased at the time of the infraction and the lessor notifies such person by mail of the notice of infraction.

(c) Where the lessor has paid any fine or penalty for which he is liable and the Bureau thereafter collects from the person to whom the vehicle was rented or leased the amount of the scheduled fine and penalties owed by such person, or any portion thereof, the lessor shall be entitled to reimbursement from the Bureau of the amount of the fines and penalties paid by the lessor, less the Bureau's cost of collection.

(d) Where the lessor is liable for an infraction, he shall not be liable for penalties in excess of the standard civil fine unless the lessor fails to answer within 15 calendar days of his actual receipt of the notice of infraction. (1973 Ed., § 40-1118; Sept. 12, 1978, D.C. Law 2-104, § 304, 25 DCR 1275.)

Section references. — This section is referred to in § 40-608.

Legislative history of Law 2-104. — See note to § 40-601.

Notice of infraction. — The fact that transcription errors are made in tallying outstanding notices of infraction so as to furnish rental

car companies with the required statutory notice under subsection (b) of this section is not a valid basis for dismissing notices of infraction valid on their face. *Avis Rent-A-Car Sys. v. District of Columbia*, App. D.C., 679 A.2d 492 (1996).

§ 40-624.1. Fleet adjudication program.

(a) For the purposes of this section, the term:

(1) "Fleet" means 5 or more company owned or long-term leased motor vehicles engaged in commercial activity. The term fleet shall not include motor vehicles which are vehicles for hire pursuant to § 47-2829.

(2) "Motor vehicle fleet owner" means any corporation, firm, agency, association, organization, or other entity holding legal title to 5 or more company owned or leased motor vehicles engaged in the regular course of business in the District of Columbia.

(b) The Mayor is authorized to implement a fleet adjudication program. The Mayor may compile notices of infraction issued during a 30-day period, reconcile traffic records, and generate a consolidated monthly fleet infraction report for motor vehicle fleet owners who have registered those motor vehicles comprising a fleet. The monthly fleet infraction report shall serve as the summons and complaint.

(c) The Mayor may, by rulemaking, impose a registration fee on all motor vehicle fleet owners authorized to participate in this program. The registration fee shall recover the administrative costs associated with the administration and enforcement of this chapter with respect to fleets.

(d) To participate in the fleet adjudication program, a motor vehicle fleet owner shall:

(1) Register its fleet engaged in the regular course of business in the District of Columbia with the Department of Public Works;

(2) Pay a registration fee to cover the District government's administrative costs for the fleet adjudication program; and

(3) Satisfy all outstanding parking infractions prior to registration in the program.

(e) A fleet owner who participates in the fleet adjudication program shall answer, within 15 days of receipt, the monthly fleet infraction report which sets forth the date and time of the infraction, as well as other information contained in the original notice of infraction. Answers shall be consistent with § 40-625(a).

(f) The fleet owner shall be primarily liable for the civil penalties imposed pursuant to this section. (Sept. 12, 1978, D.C. Law 2-104, § 304a, as added March 24, 1998, D.C. Law 12-76, § 2(a), 45 DCR 481.)

Effect of amendments. — Section 2(a) of D.C. Law 12-76 added this section.

Temporary addition of section. — Section 2(a) of D.C. Law 12-49 added this section.

Section 5(b) of D.C. Law 12-49 provides that the act shall expire after 225 days of its having taken effect or upon the effective date of the Fleet Traffic Adjudication Amendment Act of 1997, whichever occurs first.

Emergency act amendments. — For temporary addition of section, see § 2(a) of the Traffic Adjudication Fleet Adjudication Emergency Amendment Act of 1997 (D.C. Act 12-122, August 1, 1997, 44 DCR 4649), and § 2(a) of the Fleet Traffic Adjudication Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-173, October 30, 1997, 44 DCR 6911).

Legislative history of Law 12-49. — Law 12-49, the "Fleet Traffic Adjudication Temporary Amendment Act of 1997," was retained by Council and assigned Bill No. 12-296. The Bill was adopted on first and second readings on

July 1, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 3, 1997, it was assigned Act No. 12-163 and transmitted to both Houses of Congress for its review. D.C. Law 12-49 became effective on February 27, 1998.

Legislative history of Law 12-76. — Law 12-76, the "Fleet Traffic Adjudication Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-297, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-231 and transmitted to both Houses of Congress for its review. D.C. Law 12-76 became effective on March 24, 1998.

Mayor authorized to issue rules. — Section 3 of D.C. Law 12-76 provided that the Mayor may issue rules to implement the provisions of the act.

§ 40-625. Answer.

(a)(1) In answer to a notice of infraction, a person to whom it was issued may:

(A) Admit, by payment of the civil fine, the commission of the infraction; or

(B) Deny the commission of the infraction.

(2) A person charged with a parking violation may contest the charge through an adjudication by mail or at an administrative hearing limited to one or more of the following grounds with appropriate evidence to support:

(A) That the respondent was not the owner or lessee of the cited vehicle at the time of the infraction;

(B) That the cited vehicle or its state registration plates were stolen at the time of the violation occurred;

(C) That the relevant signs prohibiting or restricting parking were missing or obscured;

(D) That the relevant parking meter was inoperable or malfunctioned through no fault of the respondent; or

(E) That the facts alleged on the parking violation notice are inconsistent or do not support a finding that the specified regulation was violated.

(b) A person to whom a notice of infraction has been issued may answer by personal appearance or by mail. Answers by telephone may be permitted by regulation.

(c) A person admitting the commission of an infraction shall, at the same time he submits his answer, pay the civil fine and any additional penalties, established pursuant to § 40-605, as may be due for failure to answer within the time required by subsection (d) of this section without appearing at the hearing.

(d) A person to whom a notice of infraction has been issued shall answer within 15 calendar days of the date the notice was issued. Failure to answer within the prescribed period may result in imposition of monetary penalties established by § 40-605, in addition to the potential civil fine for the infraction. This subsection shall not apply to any fleet owner who participates in the fleet adjudication program.

(e) Any person who desires the presence at the hearing of the police officer or the Department of Transportation employee who served the notice of infraction on such person must so demand at the same time such person answers to the infraction. (1973 Ed., § 40-1119; Sept. 12, 1978, D.C. Law 2-104, § 305, 25 DCR 1275; Apr. 9, 1997, D.C. Law 11-198, § 504(c), 43 DCR 4569; March 24, 1998, D.C. Law 12-76, § 2(b), 45 DCR 481.)

Section references. — This section is referred to in §§ 40-605 and 40-626.

Effect of amendments. — D.C. Law 11-198 rewrote (a).

D.C. Law 12-76 added the last sentence in (d).

Temporary amendments of section. — Section 504(c) of D.C. Law 11-226 rewrote (a).

Section 1001 of D.C. Law 11-226 provided that Titles I, II, III, V, and VI of the act shall apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Section 2(b) of D.C. Law 12-49 added the last sentence in (d).

Section 5(b) of D.C. Law 12-49 provided that the act shall expire after 225 days of its having taken effect or upon the effective date of the Fleet Traffic Adjudication Amendment Act of 1997, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 504(c) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25,

1996, 43 DCR 4181), § 504(c) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), § 504(c) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590), § 2(b) of the Traffic Adjudication Fleet Adjudication Emergency Amendment Act of 1997 (D.C. Act 12-122, August 1, 1997, 44 DCR 4649), and § 2(b) of the Fleet Traffic Adjudication Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-173, October 30, 1997, 44 DCR 6911).

Section 1001 of D.C. Act 11-302 provides for application of the act.

Section 1001 of D.C. Act 11-429 provides for application of the act.

Section 1001 of D.C. Act 12-2 provides for application of the act.

Mayor authorized to issue rules. — Section 3 of D.C. Law 12-76 provided that the Mayor may issue rules to implement the provisions of the act.

Legislative history of Law 2-104. — See note to § 40-601.

Legislative history of Law 11-198. — See note to § 40-604.

Legislative history of Law 11-226. — See note to § 40-604.

Legislative history of Law 12-49. — See note to § 40-624.1.

Legislative history of Law 12-76. — See note to § 40-624.1.

Transfer of functions. — The functions of the Department of Transportation were trans-

ferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Right to hearing. — The right to a hearing under this section is a property right protected by the fifth and fourteenth amendments' due process clauses. *Crawford v. Parron*, 709 F. Supp. 234 (D.D.C. 1986).

§ 40-626. Hearing.

(a) Each hearing for the adjudication of a traffic infraction pursuant to this subchapter shall be held before a hearing examiner in accordance with Chapter IX of Title 32 of the District of Columbia Rules and Regulations except as provided in this chapter.

(b) The burden of proof shall be upon the District, and no infraction may be established except upon proof by a preponderance of the evidence.

(c) The police officer or Department employee issuing the notice of infraction shall appear at the hearing of a case wherein the respondent has denied that the infraction occurred by his commission; provided, that demand therefor has been made pursuant to § 40-625(e). The police officer or Department employee issuing the notice of infraction shall not be required to attend the hearing of a case wherein the respondent has admitted or admitted with explanation that the infraction occurred by his commission:

(1) Unless the respondent requests the presence of the officer or employee, as the case may be, at the same time he answers to the infraction and the hearing examiner determines that the testimony of such officer would assist his determination of the appropriate sanction to impose; or

(2) Unless the hearing examiner decides to require such presence.

(d) If a person to whom a notice of infraction has been issued fails to appear at a hearing where he is required to do so, the hearing examiner may enter a judgment by default sustaining the charges, fix the appropriate fine and assess appropriate penalties, if any, if the infraction is established by a preponderance of the evidence. Before such a default judgment is entered, the Department shall notify the respondent by regular mail that an infraction is outstanding, that a default judgment is pending and that such judgment may be avoided by entering an answer or making an appearance within 30 days of such notice. Such notice shall be mailed to the respondent's recorded address.

(e) A judgment by default may be vacated by the hearing examiner within one year of its entry only upon written application setting forth:

(1) A sufficient defense to the charge; and

(2) Excusable neglect as to the respondent's failure to attend the hearing.

(f) After due consideration of the evidence and arguments, the hearing examiner shall determine whether the infraction has been established. Where the infraction is not established, an order dismissing the charges shall be entered. Where a determination is made that an infraction has been established or where an answer admitting the commission of the infraction or admitting the commission of the infraction with explanation has been received, an appropriate order shall be entered in the Department's records.

(g) The hearing examiner may impose a civil fine for violation of infractions to which this subchapter is applicable up to and including an amount prescribed by § 40-605 exclusive of fees and charges imposed for the towing or booting of a vehicle or additional penalties imposed for failure to answer to such infraction in a timely manner.

(h) All civil fines and other monies collected pursuant to the provisions of this subchapter shall be paid into the General Fund of the District. (1973 Ed., § 40-1120; Sept. 12, 1978, D.C. Law 2-104, § 306, 25 DCR 1275.)

Legislative history of Law 2-104. — See note to § 40-601.

Editor's notes. — Chapter 10 of Title 18 of the DCMR (Vehicles and Traffic) (June, 1987) has replaced Chapter IX of Title 32 of the

District of Columbia Rules and Regulations, referred to in (a).

Cited in *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981); *Gilles v. Touchstone*, 676 F. Supp. 341 (D.D.C. 1987).

§ 40-627. Identification of pedestrian offenders.

(a) A pedestrian who is stopped by a police officer or other authorized official after the pedestrian has committed an infraction of these regulations shall be required to inform the officer or other official of his or her true name and address for the purpose of including that information on a notice of infraction: Provided, that no pedestrian shall be required to possess or display any documentary proof of his or her name or address in order to comply with the requirements of this section.

(b) A pedestrian who refuses to provide his or her name and address to a police officer upon request after having been stopped for committing an infraction of these regulations shall, upon conviction, be fined not less than \$10 nor more than \$50. (Sept. 12, 1978, D.C. Law 2-104, § 307, 25 DCR 1275; Oct. 8, 1981, D.C. Law 4-36, § 4(b), 28 DCR 3383.)

Section references. — This section is referred to in § 40-612.

Legislative history of Law 2-104. — See note to § 40-601.

Legislative history of Law 4-36. — Law 4-36 was introduced in Council and assigned Bill No. 4-248, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-63 and transmitted to both Houses of Congress for its review.

Stop and search. — Where officer had probable cause to believe that defendant had com-

mitted the offense of "walking as to create a hazard" in the officer's presence, it appeared reasonable for the officer to stop the defendant, discover his name, and issue a ticket for the civil infraction. However, it was not reasonable, within the strictures of the Fourth Amendment, for the officer to effect a full custody arrest accompanied by a body search; the only justification for the arrest and resulting search would have been if defendant had refused to disclose his name and address to the officer. *Barnett v. United States*, App. D.C., 525 A.2d 197 (1987).

Cited in *Barnett v. United States*, App. D.C., 525 A.2d 197 (1987).

Subchapter IV. Administrative Review.

§ 40-631. Appeals boards.

The Director shall establish appeals boards to consider and determine appeals brought by persons aggrieved by decisions of hearing examiners. The Director shall appoint to each appeals board one employee of the Department

of Transportation, one attorney from a list of practicing and willing attorneys submitted by the District of Columbia Bar or, if no such list is submitted, from a list compiled by the Director and one citizen from a list of willing citizens compiled and kept by the Director. In compiling and keeping such list of citizens, the Director shall consult with the various Advisory Neighborhood Commissions. The Director shall appoint a Chairperson for each appeals board. Members of appeals boards who are not employees of the District government shall receive compensation equivalent to the rate established for a GS-14 employee in the Civil Service prorated according to the number of hours actually served. Employees of the District government may not receive additional compensation but shall receive administrative leave during their actual service on an appeals board. All members of appeals boards shall receive reimbursement for actual expenses incurred. The Director shall designate employees of the Department to assist the appeals boards and shall provide such facilities and supplies as are necessary to enable the appeals boards to carry out their functions. (1973 Ed., § 40-1121; Sept. 12, 1978, D.C. Law 2-104, § 401, 25 DCR 1275.)

Section references. — This section is referred to in § 40-632.

Legislative history of Law 2-104. — See note to § 40-601.

Transfer of functions. — The functions of the Department of Transportation were trans-

ferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Cited in *Gilles v. Ware*, App. D.C., 615 A.2d 533 (1992).

§ 40-632. Right of appeal.

Any person who is aggrieved by a determination of a hearing examiner, either as to the existence of liability or the sanction imposed therefor, or both, may appeal such determination pursuant to this subchapter. The Director shall appoint an appeals board, pursuant to § 40-631, to consider and determine the appeal. (1973 Ed., § 40-1122; Sept. 12, 1978, D.C. Law 2-104, § 402, 25 DCR 1275.)

Legislative history of Law 2-104. — See note to § 40-601.

Cited in *Gilles v. Touchstone*, 676 F. Supp. 341 (D.D.C. 1987); *Kuflom v. District of Colum-*

bia Bureau of Motor Vehicle Servs., App. D.C., 543 A.2d 340 (1988); *Gilles v. Ware*, App. D.C., 615 A.2d 533 (1992).

§ 40-633. Scope of review.

Each appeals board shall review each case before it on the record and shall hold unlawful and set aside any action or findings and conclusions found to be:

- (1) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (2) Contrary to constitutional right, power, privilege or immunity;
- (3) In excess of statutory jurisdiction, authority or limitations or short of statutory rights;
- (4) Without observance of procedure required by law, including any applicable procedure provided by this chapter; or

(5) Unsupported by substantial evidence in the record of the proceedings before the appeals board. (1973 Ed., § 40-1123; Sept. 12, 1978, D.C. Law 2-104, § 403, 25 DCR 1275.)

Legislative history of Law 2-104. — See note to § 40-601.

Exhaustion of administrative remedies. — Appellant's failure to appeal the suspension of his driver's license to the Department of Transportation Appeals Board did not bar his negligence claim in court under the doctrine

requiring exhaustion of administrative remedies, because the Appeals Board is only permitted to review decisions of the hearing examiner and to consider the established record; it is not allowed to hear claims of agency negligence or to award damages caused by agency error. *Gilles v. Ware*, App. D.C., 615 A.2d 533 (1992).

§ 40-634. Time limitation.

(a) No appeal shall be reviewed if it is filed more than 15 calendar days after service of notice of the determination appealed from.

(b) Service of notice under this section shall be complete when the respondent is orally informed of the determination at the hearing or, if the respondent is not orally informed at the hearing, service of notice shall be complete 3 calendar days after the Department mails notice of the determination to the respondent.

(c) An appeal filed by mail shall be timely if postmarked within the 15-day period. (1973 Ed., § 40-1124; Sept. 12, 1978, D.C. Law 2-104, § 404, 25 DCR 1275.)

Legislative history of Law 2-104. — See note to § 40-601.

Cited in *Kufлом v. District of Columbia Bu-*

reau of Motor Vehicle Servs., App. D.C., 543 A.2d 340 (1988); *Gilles v. Ware*, App. D.C., 615 A.2d 533 (1992).

§ 40-635. Judicial review.

Appeals from decisions of the appeals board shall be by application for the allowance of an appeal filed in the Superior Court of the District of Columbia within 30 days of the decision of the appeals board; provided, that appeals from the suspension or revocation of one's license or privilege to drive shall continue to be governed by § 1-1510. Except to the extent that this chapter provides otherwise, the manner of and standards for appeals to the Superior Court of the District of Columbia shall be as set forth in § 1-1510. (1973 Ed., § 40-1125; Sept. 12, 1978, D.C. Law 2-104, § 405, 25 DCR 1275.)

Legislative history of Law 2-104. — See note to § 40-601.

Computation of appeal period. — Motion for reconsideration not filed within ten days of the judge's order did not toll the running of the 30-day period in which required to appeal. *Fleming v. District of Columbia*, App. D.C., 633 A.2d 846 (1993).

Cited in *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981); *Clay v. District of Columbia*, 112 WLR 2261 (Super. Ct. 1984); *Gilles v. Touchstone*, 676 F. Supp. 341 (D.D.C. 1987); *Gilles v. Ware*, App. D.C., 615 A.2d 533 (1992); *Avis Rent-A-Car Sys. v. District of Columbia*, App. D.C., 679 A.2d 492 (1996).

*Subchapter V. Severability; Effective Date.***§ 40-641. Severability.**

If any provision of this chapter or the application of such provision to any person or circumstances shall be held unconstitutional or otherwise invalid, the constitutionality or validity or the remainder of this chapter and the applicability of such provision to other persons or circumstances shall not be affected thereby. (1973 Ed., § 40-1126; Sept. 12, 1978, D.C. Law 2-104, § 701, 25 DCR 1275.)

Legislative history of Law 2-104. — See note to § 40-601.

§ 40-642. Effective date.

The provisions of this chapter shall apply only to violations which occur after the Director has promulgated the necessary regulations to carry out this chapter pursuant to § 40-607. (1973 Ed., § 40-1127; Sept. 12, 1978, D.C. Law 2-104, § 702, 25 DCR 1275.)

Legislative history of Law 2-104. — See note to § 40-601.

CHAPTER 7. REGULATION OF TRAFFIC.

Subchapter I. General Provisions.

Sec.

- 40-701. Short title.
- 40-702. Definitions.
- 40-703. Mayor to make rules; Department of Transportation; Director; Congressional parking; title fees; common carriers; penalties; prosecutions; publication of regulations; excise tax; impoundment for outstanding violations.
- 40-704. Mayor to establish fees for storing impounded vehicles.
- 40-705. Appeal from assessment of excise tax for title certificates; election of remedies.
- 40-706. Mayor may enter into interstate agreement concerning enforcement of traffic laws.
- 40-707. Office of Registrar of Titles and Tags.
- 40-708. Issuance of congressional tags.
- 40-709. Issuance of duplicate congressional tags.
- 40-710. Parking space for members of Congress.
- 40-711. Parking of automobiles in Municipal Center; regulations; violations and penalties.
- 40-712. Speeding and reckless driving.
- 40-713. Negligent homicide.
- 40-714. Negligent homicide included in manslaughter where death due to operation of vehicle.

Sec.

- 40-715. Immoderate speed not dependent on legal rate of speed.
- 40-716. Fleeing from scene of accident; driving under the influence of liquor or drugs.
- 40-717. [Repealed].
- 40-717.1. Prima facie evidence of intoxication.
- 40-717.2. Admissibility of test results.
- 40-718. Smoke screens prohibited.
- 40-718.1. Tinted windows prohibited.
- 40-719. Garage keeper to report cars damaged in accidents.
- 40-720. Convictions to be reported.
- 40-721. Control over park system not affected by this chapter.
- 40-722. Repeal of certain prior laws; saving clause.
- 40-723. Severability.
- 40-724. Parking meters.
- 40-725. Loitering of public cabs.
- 40-726. Right-of-way at crosswalks.

Subchapter II. Automated Traffic Enforcement.

- 40-751. Authorized; violations as moving violations; evidence; definition.
- 40-752. Liability for fines; notice of infraction; hearing.
- 40-753. Agreement with private entity to provide records and services.

Subchapter I. General Provisions.

§ 40-701. Short title.

This subchapter may be cited as the “District of Columbia Traffic Act, 1925.” (Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 1; 1973 Ed., § 40-601.)

Section references. — This section is referred to in § 23-581.

Editor’s notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 11-198, the preexisting text of Chapter 7, §§ 40-701 through 40-726, has been designated as subchapter I of this chapter.

Because of the codification of Title IX of D.C. Law 11-198 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 7 as subchapter I, “subchapter” has been substituted for “chapter” in this section.

Cited in *District of Columbia v. Morrissey*, App. D.C., 668 A.2d 792 (1995).

§ 40-702. Definitions.

When used in this subchapter:

(1) The term “motor vehicle” means all vehicles propelled by internal-combustion engines, electricity, or steam. The term “motor vehicle” shall not include traction engines, road rollers, vehicles propelled only upon rails or

tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.

(2) The term “Court” means the Superior Court of the District of Columbia.

(3) The term “District” means the District of Columbia.

(4) The term “Mayor” means the Mayor of the District of Columbia or his designated agent.

(5) The term “person” means individual, partnership, corporation, or association.

(6) The term “park” means to leave any motor vehicle standing on a public highway, whether or not attended.

(7) The term “public highway” means any street, road, or public thoroughfare.

(8) The term “this subchapter” includes all lawful regulations issued thereunder by the Council of the District of Columbia and all lawful rules issued thereunder by the Mayor of the District of Columbia or his designated agent.

(9) The term “vehicle” shall apply to any appliance moved over a highway on wheels or traction tread, including street cars, draft animals, and beasts of burden.

(10) Traffic shall be deemed to include not only motor vehicles but also all vehicles, pedestrians, and animals, of every description.

(11) The term “chemical test” means a test which measures or relates to the properties or actions of chemicals. (Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 2; July 3, 1926, 44 Stat. 812, ch. 739, § 1; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 40-602; Apr. 26, 1977, D.C. Law 1-133, title II, § 201(a), 23 DCR 9697; Nov. 15, 1983, D.C. Law 5-42, § 2(a), 30 DCR 4999; Mar. 15, 1985, D.C. Law 5-176, § 12(a), 32 DCR 748; May 5, 1992, D.C. Law 9-96, § 4(a), 38 DCR 7274.)

Legislative history of Law 1-133. — Law 1-133 was introduced in Council and assigned Bill No. 1-11, which was referred to the Committee on Transportation and Environmental Affairs, the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on October 12, 1976 and November 23, 1976, respectively. Signed by the Mayor on February 14, 1977, it was assigned Act No. 1-230 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-42. — Law 5-42 was introduced in Council and assigned Bill No. 5-29, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on July 5, 1983, and September 6, 1983, respectively. Signed by the Mayor on September 22, 1983, it was assigned Act No. 5-67 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-176. — Law 5-176 was introduced in Council and assigned Bill No. 5-382, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-96. — Law 9-96, the “Comprehensive Anti-Drunk Driving Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-34, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-98 and transmitted to both Houses of Congress for its review.

Change in government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (292, 293, 295 to 299) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the

District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Scope of chapter. — This chapter is not limited in its scope and purpose to motor vehicle traffic only. *Smallwood v. District of Columbia*, 17 F.2d 210 (D.C. Cir. 1927).

Vehicles are limited to those that run on land. *McBoyle v. United States*, 283 U.S. 25, 51 S. Ct. 340, 75 L. Ed. 816 (1931).

Vehicles include commercial vehicles with solid tires. *Smallwood v. District of Columbia*, 17 F.2d 210 (D.C. Cir. 1927).

Exclusion of horsedrawn vehicles from arterial highways or boulevards is authorized under this chapter. *District of Columbia v. Wheeler*, 17 F.2d 953 (D.C. Cir. 1927).

Cited in *Coleman v. Cumis Ins. Soc'y, Inc.*, App. D.C., 558 A.2d 1169 (1989).

§ 40-703. Mayor to make rules; Department of Transportation; Director; Congressional parking; title fees; common carriers; penalties; prosecutions; publication of regulations; excise tax; impoundment for outstanding violations.

(a) The Mayor is authorized and empowered to make, modify, repeal, and enforce rules relating to and concerning the following:

(1) The control of traffic and the movement of traffic;

(2)(A) The length, weight, height, and width of vehicles; and

(B) The brakes, horns, lights, mufflers, and other equipment of vehicles and the inspection of same;

(3)(A) The registration and reregistration of vehicles;

(B) The titling and retitling of motor vehicles and trailers; and the transfer of titles to motor vehicles and trailers; and

(C) The revocation, suspension, restoration, and reinstatement of the registration for motor vehicles and trailers and of certificates of title to motor vehicles and trailers;

(4) The issuance, suspension, revocation, restoration, and reinstatement of operator's permits and operating privileges; provided, that the fee for restoration or reinstatement shall be \$75;

(5) The establishment and location of hack stands; and

(6) The speed, routing, and parking of vehicles; provided, that the Mayor shall establish and locate parking areas in the vicinity of government establishments for use only by members of Congress and governmental officials when on official business.

(b) There is established in the government of the District of Columbia a Department of Transportation, which under the direction of the Mayor, shall have charge of the issuance and revocation of operators' permits, the registration and titling of motor vehicles, the making of traffic studies and plans, the establishment and designation of arterial and other public highways, provid-

ing for the equipment of any street, road, or highway with control lights or other devices, or both, for the regulation of traffic, the installation and maintenance of traffic signs, signals, and markers, and of such other matters as may be determined by the Mayor. The Mayor shall appoint a Director of Vehicles and Traffic, who shall be in charge of said Department, and such other personnel as he may deem necessary to perform the duties thereof and as may be appropriated for by Congress. The Director of Vehicles and Traffic shall be responsible directly to the Mayor for the faithful performance of his duties and shall be subject to removal by the Mayor for cause.

(c) Members of Congress may park their vehicles in any available curb space in the District of Columbia, when:

- (1) The vehicle is used by the member of Congress on official business;
- (2) The vehicle is displaying a Congressional registration tag issued by the jurisdiction represented by the member; and
- (3) The vehicle is not parked in violation of a loading zone, rush hour, firehouse, or fire plug limitation.

(d) The Mayor shall cause to be levied, collected, and paid a \$20 fee for each titling and retitling, and he shall not, after the 1st day of January, 1932, register or renew the registration of any motor vehicle or trailer unless and until the owner thereof shall make application in the form prescribed by the Mayor and be granted an official certificate of title for such vehicle. No registration or other fee shall be charged to vehicles owned by the federal or District government or any duly accredited representative of a foreign government. The owner of a motor vehicle or trailer registered in the District of Columbia shall not, after the 1st day of January, 1932, operate or permit or cause to be operated any such vehicle upon any public highway in the District without first obtaining a certificate of title therefor, nor shall any individual knowingly permit any certificate of title to be obtained in his name for any vehicle not in fact owned by him, and any individual violating any provision of this subsection or any regulations promulgated thereunder shall be fined not more than \$1,000 or imprisoned not more than one year, or both. If the properly designated agent of the Mayor shall determine that an applicant for a certificate of title is not entitled thereto, such certificate of title may be refused, and in that event unless such determination is reversed upon written application to the Mayor by the individual affected, such individual shall be entitled to proceed further as provided under § 40-302(a); provided, that reasonable time for hearing be given the applicant in the first instance.

(e) As to all common carriers by vehicle which enter, operate in, or leave the District of Columbia, the power to route small vehicles within the District of Columbia, to regulate their equipment other than that specifically named elsewhere in this subchapter, to regulate their schedules and their loading and unloading, to locate their stops and all platforms and loading zones, and to require the appropriate marking thereof is vested in the Public Service Commission of the District of Columbia.

(f) Except as provided in the District of Columbia Traffic Adjudication Act of 1978 (D.C. Code § 40-601 et seq.), any person violating any provision of this subchapter or any rule promulgated hereunder shall, upon conviction thereof,

be fined not more than \$300 or imprisoned for not more than 90 days, or both. Prosecution for violations shall be in the Superior Court of the District of Columbia upon information filed by the Corporation Counsel of the District of Columbia or any of his or her assistants.

(g) All regulations promulgated under the authority of this subchapter shall be published in accordance with the requirements of title 1 of the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 et seq.).

(h) Repealed.

(i) Repealed.

(j)(1) In addition to the fees and charges levied under other provisions of this subchapter, there is hereby levied and imposed an excise tax on the issuance of every original certificate of title for a motor vehicle or trailer in the District of Columbia and, in the case of a sale, resale, gift or other transfer thereof, on the issuance of every subsequent certificate of title (except in the case of a bona fide gift between spouses or between parent and child) at the following percentage of the fair market value of the motor vehicle or trailer at the time the certificate of title is issued:

Weight Class	Registration Fee
Class I (3,499 pounds or less)	6%
Class II (3,500 pounds or more)	7%

(2) For the purpose of this section, the Mayor or his duly authorized representative shall determine the fair market value of a motor vehicle or trailer. As used in this section, the term “original certificate of title” shall mean the first certificate of title issued by the District of Columbia for any particular motor vehicle or trailer. No certificate of title so issued shall be delivered or furnished to the person entitled thereto until the tax has been paid in full. The Assessor of the District of Columbia may require every applicant for a certificate to title to supply such information as he deems necessary as to the time of purchase, the purchase price, and other information relative to the determination of the fair market value of any motor vehicle or trailer for which a certificate of title is required and issued.

(3) The issuance of certificates of title for the following motor vehicles and trailers shall be exempt from the tax imposed by this subsection:

(A) Motor vehicles and trailers owned by the United States or the District of Columbia.

(B) Repealed.

(C) Repealed.

(D) Motor vehicles and trailers owned by a utility or public service company for use in furnishing a commodity or service; provided, that the receipts from furnishing such commodity or service are subject to a gross receipts or mileage tax in force in the District of Columbia at the time of a certificate of title for any such vehicle or trailer is issued.

(E) New motor vehicles acquired from dealers as replacements for defective vehicles purchased new not more than 60 days prior to the date of such replacement, except that if the fair market value of any replacement vehicle is greater than that of the vehicle which it replaces, then the tax imposed by this section shall be paid on such difference in value. If the fair

market value of any replacement vehicle is less than that of the vehicle which it replaces, then the Mayor or his designated agent is authorized to refund to the owner of the replacement vehicle an amount equal to the difference between the excise tax paid on the defective vehicle and the excise tax paid on the replacement vehicle.

(F) Rental vehicles and utility trailers, as defined in § 40-111.

(G) Taxis or taxicabs as defined in § 40-1703(8).

(k)(1) Any unattended motor vehicle found parked at any time upon any public highway of the District of Columbia against which there are 2 or more outstanding or otherwise unsettled traffic violation notices or notices of infraction or against which there have been issued 2 or more warrants may, by or under the direction of an officer or member of the Metropolitan Police force or the United States Park Police force or an employee of the District of Columbia Department of Transportation, either by towing or otherwise, be removed or conveyed to and impounded in any place designated by the Mayor or immobilized in such manner as to prevent its operation; except, that no such vehicle shall be immobilized by any means other than by the use of a device or other mechanism which will cause no damage to such vehicle unless it is moved while such device or mechanism is in place.

(2) It shall be the duty of the officer or member of the police force or employee of the District of Columbia Department of Transportation, removing or immobilizing such motor vehicle, or under whose direction such vehicle is removed or immobilized, to inform as soon as practicable the owner of an impounded or immobilized vehicle of the nature and circumstances of the prior unsettled traffic violation notices, notices of infractions or warrants, for which or an account of which such vehicle was impounded or immobilized. In any case involving immobilization of a vehicle pursuant to this subsection, such member or officer or employee shall cause to be placed on such vehicle, in a conspicuous manner, notice sufficient to warn any individual to the effect that such vehicle has been immobilized and that any attempt to move such vehicle might result in damage to such vehicle.

(3) The owner of such impounded or immobilized vehicle, or other duly authorized person, shall be permitted to repossess or to secure the release of the vehicle upon:

(A)(i) The depositing of the collateral required for his appearance in the Superior Court of the District of Columbia to answer for each violation; or

(ii) Depositing the amount of the potential fine and penalty for each infraction, for which there is no outstanding or otherwise unsettled traffic violation notice, notice of infraction or warrant; and

(B) Upon the payment of the fees required by paragraph (4) of this section.

(4) The owner of an immobilized vehicle shall be subject to a booting fee of \$50 for such immobilization. The owner of an impounded motor vehicle shall be subject to a towing fee of \$75, plus a fee for storage. The owner of an immobilized vehicle which was impounded shall be subject to a total fee of \$75 plus a fee for storage, except that the total fee shall be \$175 plus a fee for storage whenever the size or weight of the impounded vehicle requires the

Mayor to engage an outside contractor or utilize special equipment to tow the vehicle. (Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 6; July 3, 1926, 44 Stat. 814, ch. 739, § 4; Feb. 27, 1931, 46 Stat. 1424, ch. 317, §§ 3, 4; Dec. 19, 1932, 47 Stat. 750, ch. 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 2, 1945, 59 Stat. 313, ch. 222; May 27, 1949, 63 Stat. 128, title III, ch. 146, § 301; Oct. 28, 1949, 63 Stat. 972, title XI, ch. 782, § 1106(a); July 24, 1956, 70 Stat. 633, ch. 695, § 1; Sept. 2, 1957, 71 Stat. 598, Pub. L. 85-273, § 3; Oct. 3, 1962, 76 Stat. 742, Pub. L. 87-745, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; Sept. 30, 1966, 80 Stat. 856, Pub. L. 89-610, title II, § 201; 1967 Reorg. Plan No. 3, 81 Stat. 980, § 503(c); Dec. 4, 1967, 81 Stat. 532, Pub. L. 90-172, § 1; Oct. 31, 1969, 83 Stat. 172, 174, Pub. L. 91-106, titles II, IV, §§ 201, 404; Dec. 12, 1969, 83 Stat. 343, Pub. L. 91-145, § 101; July 29, 1970, 84 Stat. 570, 583, Pub. L. 91-358, title I, §§ 155(a), 163(g)(2); Dec. 15, 1971, 85 Stat. 657, Pub. L. 92-196, title VII, § 705; Oct. 21, 1972, 86 Stat. 1015, Pub. L. 92-518, title III, § 301(a); 1973 Ed., § 40-603; Nov. 1, 1973, 87 Stat. 531, Pub. L. 93-145, § 101; Oct. 21, 1975, D.C. Law 1-23, title I, § 102, 22 DCR 2094; Jan. 22, 1976, D.C. Law 1-42, § 7(b), 22 DCR 6317; June 15, 1976, D.C. Law 1-70, title II, § 201, 23 DCR 536; Apr. 19, 1977, D.C. Law 1-124, title I, § 102, 23 DCR 8749; Apr. 26, 1977, D.C. Law 1-133, title IV, § 402, 23 DCR 9697; Sept. 12, 1978, D.C. Law 2-104, §§ 501, 601, 25 DCR 1275; Mar. 3, 1979, D.C. Law 2-139, § 3205(l), 25 DCR 5740; Mar. 6, 1979, D.C. Law 2-157, § 5, 25 DCR 6995; Apr. 3, 1982, D.C. Law 4-97, § 5, 29 DCR 765; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138; June 22, 1983, D.C. Law 5-14, §§ 803, 804, 30 DCR 2632; Nov. 15, 1983, D.C. Law 5-42, § 2(b), 30 DCR 4999; May 1, 1990, D.C. Law 8-103, § 2, 37 DCR 1615; Sept. 26, 1990, D.C. Law 8-170, § 2, 37 DCR 4839; Aug. 17, 1991, D.C. Law 9-30, § 4(a), 38 DCR 4215; May 5, 1992, D.C. Law 9-96, § 4(b), 38 DCR 7274.)

Cross references. — As to location of hack stands, see § 1-312.

As to authority to make rules and regulations for protection of life, health, and property, see § 1-319.

As to effective date of D.C. Law 2-139, see § 1-637.1.

As to jurisdiction and control over public ways, see § 7-102.

As to Council's authority to designate portions of streets and sidewalks to be used for business purposes including parking, see § 7-1405.

As to regulation of traffic in public parks and playgrounds, see §§ 8-105 and 40-721.

As to inapplicability of Alcoholic Beverage Control Act to this section, see § 25-127.

As to rules and regulations for registration and licensing of motor vehicles, see § 40-102.

As to funds for expenses of Director, see § 40-104.

As to Mayor's authority to make rules and regulations not inconsistent with Chapter 1 of this title, see § 40-106.

As to inspection of motor vehicles, see Chapter 2 of this title.

As to senior citizen motor vehicle accident prevention course certification, see subchapter II of Chapter 4 of this title.

As to interstate agreement concerning enforcement of traffic laws, see § 40-706.

As to reporting of convictions, see § 40-720.

As to rules and regulations concerning parking meters, see § 40-724.

As to prosecution for violation of rules under Public Utilities Law, see § 43-307.

As to Mayor's authority to make rules and regulations concerning public utilities, see § 43-411.

Section references. — This section is referred to in §§ 1-637.1, 1-2414, 1-2466, 25-127, 40-705, 40-708, 40-720, 43-307, and 47-2831.

Legislative history of Law 1-23. — Law 1-23 was introduced in Council and assigned Bill No. 1-47, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, and second readings, and reconsideration of second reading, on April 15, 1975, June 1, 1975, June 24, 1975 and July 11, 1975, respectively. Signed by the Mayor on July 23, 1975, it was assigned Act

No. 1-34 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-42. — Law 1-42 was introduced in Council and assigned Bill No. 1-161, which was referred to the Committee on the Budget. The Bill was adopted on first and second readings on July 29, 1975 and October 7, 1975, respectively. Signed by the Mayor on October 24, 1975, it was assigned Act No. 1-59 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-70. — Law 1-70 was introduced in Council and assigned Bill No. 1-229, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings and reconsiderations of final reading on February 20, 1976, March 11, 1976 and April 6, 1976, respectively. Signed by the Mayor on April 20, 1976, it was assigned Act No. 1-106 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-124. — Law 1-124 was introduced in Council and assigned Bill No. 1-375, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 3, 1976 and December 17, 1976, respectively. Signed by the Mayor on January 25, 1977, it was assigned Act No. 1-226 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-133. — Law 1-133 was introduced in Council and assigned Bill No. 1-11, which was referred to the Committee on Transportation and Environmental Affairs, the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on October 12, 1976 and November 23, 1976, respectively. Signed by the Mayor on February 14, 1977, it was assigned Act No. 1-230 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-104. — Law 2-104 was introduced in Council and assigned Bill No. 2-195, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-215 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-157. — Law 2-157 was introduced in Council and assigned Bill No. 2-284, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-326 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-97. — Law 4-97 was introduced in Council and assigned Bill No. 4-337, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on January 12, 1982, and January 26, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-155 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-145. — Law 4-145 was introduced in Council and assigned Bill No. 4-389, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-213 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-14. — Law 5-14 was introduced in Council and assigned Bill No. 5-74, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on April 12, 1983 and April 26, 1983, respectively. Signed by the Mayor on May 4, 1983, it was assigned Act No. 5-29 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-42. — Law 5-42 was introduced in Council and assigned Bill No. 5-29, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on July 5, 1983, and September 6, 1983, respectively. Signed by the Mayor on September 22, 1983, it was assigned Act No. 5-67 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-103. — Law 8-103, the "District of Columbia Traffic Act Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-270, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on January 30, 1990, and February 13, 1990, respectively. Signed by the Mayor on February 28, 1990, it was assigned Act No. 8-157 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-153. — Law 8-153, the "Motor Vehicle Fees Amendment Temporary Act of 1990," was introduced in

Council and assigned Bill No. 8-591. The Bill was adopted on first and second readings on May 29, 1990, and June 12, 1990, respectively. Signed by the Mayor on June 13, 1990, it was assigned Act No. 8-213 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-170. — Law 8-170, the “Motor Vehicle Fees Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-213, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 12, 1990, and June 26, 1990, respectively. Signed by the Mayor on July 12, 1990, it was assigned Act No. 8-235 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-19. — Law 9-19, the “Omnibus Budget Support Temporary Act of 1991,” was introduced in Council and assigned Bill No. 9-205. The Bill was adopted on first and second readings on May 7, 1991, and June 4, 1991, respectively. Signed by the Mayor on June 21, 1991, it was assigned Act No. 9-43 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-30. — Law 9-30, the “District of Columbia Motor Vehicle Services Fees Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-163, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-57 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-96. — See note to § 40-702.

Mayor authorized to issue rules. — Section 1102 of D.C. Law 5-14 provided that the Mayor shall issue rules necessary to carry out the provisions of the act.

Delegation of authority under Law 5-14. — See Mayor’s Order 83-190, July 25, 1983.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (295 to 299) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were re-

placed by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Department of Vehicles and Traffic abolished. — The Department of Vehicles and Traffic, including the Director, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 54 of the Board of Commissioners, dated June 30, 1953, as amended, September 1, 1953, established a Department of Vehicles and Traffic, headed by a Director; a Board of Revocation and Review of Hackers’ Identification Cards; a Motor Vehicle Parking Agency; and a Commissioners’ Traffic Advisory Board; prescribed the functions thereof; and abolished the previously existing Department of Vehicles and Traffic, the Registrar of Titles and Tags, the Board of Revocation and Review of Hackers’ Identification Cards, the Driver Improvement Section, and the Motor Vehicle Parking Agency. Reorganization Order No. 54 was repealed and replaced by Organization Order Nos. 105, 106, 107, and 108, dated May 17, 1955. Organization Order No. 105 continued the Department of Vehicles and Traffic and prescribed the functions thereof. Organization Order No. 106 continued the Motor Vehicle Parking Agency and prescribed the composition and functions thereof. The Department of Vehicles and Traffic was redesignated as the Department of Motor Vehicles by Commissioners’ Order No. 58-919, dated June 10, 1958. The Department of Highways was replaced by Reorganization Order No. 58-1116, dated July 15, 1958, which order established the Department of Highways and Traffic. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 107, relating to the Hackers’ Board was redesignated as Organization Order No. 13, dated August 15, 1968, and amended. Organization Order No. 108, as amended, replaced the Commissioners’ Traffic Advisory Board with a Citizens’ Traffic Board, and prescribed the composition and functions thereof. Reorganization Plan No. 2 of 1975 combined the Department of Motor Vehicles and the Department of Highways and Traffic to form the Department of Transportation.

The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Office of Assessor abolished. — The Office of the Assessor was abolished and the functions thereof transferred to the Board of Commis-

sioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Assessor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, abolished the Office of the Assessor and transferred the functions to the Finance Office in the Department of General Administration. The same order provided that an Office of the Assessor would be created in the Finance Office. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, provided that the Finance Office (consisting of the Office of the Finance Officers, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) shall continue under the direction and control of the Director of General Administration, and prescribed the functions thereof. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. Functions of the Finance Office was stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. The Office of Budget and Financial Management was replaced by Organization Order No. 50, dated December 31, 1974, which Order established the Office of Budget and Management Systems. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Resource Development.

This section is not unconstitutional as vesting legislative power and unregulated discretion in administrative officers. *La Forest v. Board of Comm'rs*, 92 F.2d 547 (D.C. Cir.), cert. denied, 302 U.S. 760, 58 S. Ct. 367, 82 L. Ed. 588 (1937).

Purpose of section. — This section is intended to prevent theft and to expedite the recovery of stolen vehicles, and thus serves a general law enforcement purpose to which the public duty doctrine would generally apply. *Auto World, Inc. v. District of Columbia*, App. D.C., 627 A.2d 11 (1993).

Long-continued physical presence, without more, does not constitute residence for purposes of subsection (j) of this section. *District of Columbia v. Fleming*, 217 F.2d 18 (D.C. Cir. 1954).

Subsection (d) of this section does not void an otherwise valid contract for purchase of an automobile. *Associates Disct. Corp. v. Hardesty*, 122 F.2d 18 (D.C. Cir. 1941).

Violation of traffic regulation constitutes negligence per se. *Rogers v. Cox*, App. D.C., 75 A.2d 776 (1950).

Violation of ordinance intended to promote safety is negligence, and if by creating hazard which ordinance was intended to avoid it brings about harm which ordinance was intended to prevent, it is a legal cause of the harm. *Ross v. Hartman*, 139 F.2d 14 (D.C. Cir. 1943), cert. denied, 321 U.S. 790, 64 S. Ct. 790, 88 L. Ed. 1080 (1944).

Purpose of point system. — The point system was designed to facilitate the determination of drivers who present such danger to the community at large that they should not be allowed to continue to use public highways. *Bungardeanu v. England*, App. D.C., 219 A.2d 104 (1966).

Bases for determining suspension or revocation. — The point system is by no means the exclusive method which may be used to suspend or revoke licenses; a person's driver's license may be suspended or revoked where that person's driving demonstrates a flagrant disregard for the safety of persons or property. *Bungardeanu v. England*, App. D.C., 219 A.2d 104 (1966).

Flagrant or willful disregard of safety. — Flagrant disregard or willful disregard for safety of persons or property emphasizes the open or notorious nature of the act but also imports an element of willfulness, and willfulness does not necessarily require an intent to do harm, but it does require a conscious indifference to consequences under circumstances likely to cause harm. *Bohannon v. District of Columbia Dep't of Motor Vehicles*, App. D.C., 288 A.2d 672 (1972).

Purpose of impoundment. — The impoundment remedy is directed toward insuring the appearance of the culpable party in court to answer for his parking violations. *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979).

Purpose of revocation and suspension proceedings is not punishment of driver but protection of public from those who have demonstrated that their driving presents a hazard to life and property. *Bungardeanu v. England*, App. D.C., 219 A.2d 104 (1966).

Revocation or suspension of driver's license is permitted only where there is breach of usual and reasonable regulations made concerning control of traffic.

Bungardeanu v. England, App. D.C., 219 A.2d 104 (1966).

Designation of intersections for traffic signals discretionary. — The designation of intersections for installation of traffic control signals is essentially legislative in character and is the result of an exercise of discretion and judgment, and failure to establish a signal at an intersection was not such negligence as would make the District liable for the death of a pedestrian who was killed by motor vehicle while crossing street. *Urow v. District of Columbia*, 316 F.2d 351 (D.C. Cir.), cert. denied, 375 U.S. 826, 84 S. Ct. 69, 11 L. Ed. 2d 59 (1963).

Pedestrians' right-of-way. — Under the regulations authorized by this section, pedestrians are given the right-of-way at all crosswalks except at controlled crossings. *Griffith v. Slaybaugh*, 29 F.2d 437 (D.C. Cir. 1928).

Traffic laws of District govern mail trucks over orders of the post office. *White v. District of Columbia*, 4 F.2d 163 (D.C. Cir. 1925).

Ordinance requiring motor vehicles, left unattended in public place, to be locked is a safety measure, and its violation is negligence. *Ross v. Hartman*, 139 F.2d 14 (D.C. Cir. 1943), cert. denied, 321 U.S. 790, 64 S. Ct. 790, 88 L. Ed. 1080 (1944).

Violation of safety ordinance proximate cause of injury. — Where a truck owner's agent violated a traffic ordinance by leaving the truck unattended, in a public alley, with its ignition unlocked and the key in the switch, and an unknown person drove the truck away and negligently ran over the plaintiff, the violation of the ordinance was negligence and constituted the proximate cause of the injury rendering owner liable therefor. *Ross v. Hartman*, 139 F.2d 14 (D.C. Cir. 1943), cert. denied, 321 U.S. 790, 64 S. Ct. 790, 88 L. Ed. 1080 (1944).

Where defendant's driver was negligent in leaving his motor vehicle unlocked and such negligence was the proximate cause of the accident in which plaintiffs were injured, the defendant was liable for damages. *R.W. Claxton, Inc. v. Schaff*, 169 F.2d 303 (D.C. Cir.), cert. denied, 335 U.S. 871, 69 S. Ct. 168, 93 L. Ed. 415 (1948).

Ownership of vehicle. — This section applies to the registered owner, his legal representative, or a person authorized by the owner to operate the vehicle. *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979).

Chattel mortgagee not included. — The owner of a vehicle contemplated by this section does not include a chattel mortgagee. *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979); *Franklin Inv. Co. v. District of Columbia*, App. D.C., 462 A.2d 447 (1983).

Ownership creates a presumption of culpability due to the inconvenience of keeping watch over an illegally parked vehicle to ascertain its operator. *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979).

Inference of culpable behavior created by this section does not attach to a secured party whose right to repossess accrues after the parking violations. *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979).

Subsection (k)(4) does not make District a lienholder regarding towing and storage fees on impounded vehicle such that the District would have priority over a prior chattel mortgagee. *Franklin Inv. Co. v. District of Columbia*, App. D.C., 462 A.2d 447 (1983).

Chattel mortgagee's right to take possession of an impounded vehicle flows not from the impoundment provisions but from the Uniform Commercial Code provisions governing secured transactions. *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979).

Certificate of title held by finance company. — The sale of a used automobile by a dealer who has possession thereof with authority from a finance company to offer it for sale in the regular course of business was not void because certificate of title held by finance company was not assigned to buyer by dealer at time of transfer, as required by registration regulations. *Fogle v. General Credit, Inc.*, 122 F.2d 45 (D.C. Cir. 1941).

Purpose of dealer holding certificate of title for used vehicle. — The purpose of the registration regulation that no dealer shall have any used motor vehicle or trailer in his possession unless he shall have a certificate of title for it issued or assigned to him is apparently to prevent persons holding certificate from giving possession of vehicle to a dealer without also delivering certificate to him. *Fogle v. General Credit, Inc.*, 122 F.2d 45 (D.C. Cir. 1941).

Regulations held reasonable. — Regulations prohibiting use of vehicles with solid tires on certain arterial streets were valid and reasonable. *Smallwood v. District of Columbia*, 17 F.2d 210 (D.C. Cir. 1927).

Regulations prohibiting speed in excess of 15 miles an hour on certain bridges were valid and reasonable. *District of Columbia v. Bailey*, 18 F.2d 367 (D.C. Cir. 1927).

Regulations which prevent the parking of automobiles on certain streets between 2 a. m. and 8 a. m. to enable the snow-removal machinery of the city to function is a reasonable and proper regulation. *District of Columbia v. Smith*, 93 F.2d 650 (D.C. Cir. 1938).

A traffic and motor vehicle regulation permitting suspension or revocation of a driver's li-

cense on the basis of operation of motor vehicle in such manner as to show flagrant disregard for safety of persons or property is not unreasonable or too vague to inform public of prohibited conduct and does not make its enforcement unpredictable. *Bungardeanu v. England*, App. D.C., 219 A.2d 104 (1966).

A regulation providing that an automobile operator's urine content of .20 percent of alcohol at the time of his operation of a motor vehicle shall constitute prima facie proof that he was intoxicated was usual and reasonable for determining revocation of operator's permits. *Bungardeanu v. England*, App. D.C., 219 A.2d 104 (1966).

Revocation of permit based on flagrant disregard for safety. — A traffic hearing officer did not exceed his authority in revoking the operator's permit of a motorist convicted of speeding in a school zone even though under the point system only 3 points could be assessed for such a violation, since notwithstanding such point system, revocation of an operator's permit is authorized when, following a lawful hearing, it is concluded that the motorist drove in such a manner as to show a flagrant disregard for the safety of persons or property. *Tillman v. Director of Vehicles & Traffic*, App. D.C., 144 A.2d 922 (1958).

Operation of a motor vehicle in such a manner as to show flagrant disregard for the safety of persons and property could be made the basis of revocation of a driver's license even though the driver had previously been acquitted of traffic charges arising out of same incidents. *Bungardeanu v. England*, App. D.C., 219 A.2d 104 (1966).

Imprisonment of indigent in default of payment of fine. — Where a defendant is indigent, a sentence of imprisonment in default of payment of a fine which exceeds the maximum term of imprisonment which could be imposed under the substantive statute as an original sentence is an invalid exercise of court's discretion. *Sawyer v. District of Columbia*, App. D.C., 238 A.2d 314 (1968).

Automobile purchase held exempt from subsection (j) excise tax. — Where a govern-

ment employee, who lived at his mother's home in the District of Columbia, purchased an automobile in the District and drove it immediately to Connecticut where he had maintained a home for 7 years, and left the automobile in Connecticut for use of his wife and daughters, and he spent every other weekend in Connecticut with his family, and it was not until a year later that his wife joined him in the District, he was not subject to excise tax in District under subsection (j) of this section. *District of Columbia v. Fleming*, 217 F.2d 18 (D.C. Cir. 1954).

Department's refusal to disclose information. — Absent properly authorized, reasonable, published criteria for restricting access under 32 DCRR § 1.104, the Department of Transportation cannot refuse a request for the names of holders of valid driver's permits based on the intended use of the information for commercial purposes as being beyond the scope of the Department's authority. *Dunhill v. Director*, D.C. Dep't of Transp., App. D.C., 416 A.2d 244 (1980).

Where the information sought by a plaintiff, the names of holders of valid driver's licenses, was available without limitation under 32 DCRR § 1.104, disclosure was authorized or mandated by other law under § 1-1524(c) and Department of Transportation could not deny disclosure based on § 1-1524(a)(2). *Dunhill v. Director*, D.C. Dep't of Transp., App. D.C., 416 A.2d 244 (1980).

Cited in *United States ex rel. Arlington & F. Auto R.R. v. Elgen*, 98 F.2d 264 (D.C. Cir. 1938); *Persham v. United States*, 104 F.2d 249 (D.C. Cir. 1939); *Shelton v. United States*, 165 F.2d 241 (D.C. Cir. 1947); *Monette v. District of Columbia*, App. D.C., 201 A.2d 875 (1964); *United States v. Page*, App. D.C., 298 A.2d 233 (1972); *United States v. Robinson*, 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973); *Reap v. Department of Motor Vehicles*, App. D.C., 305 A.2d 513 (1973); *District of Columbia v. Sullivan*, App. D.C., 436 A.2d 364 (1981); *Reynolds v. District of Columbia*, App. D.C., 614 A.2d 1285 (1992); *District of Columbia v. Morrissey*, App. D.C., 668 A.2d 792 (1995).

§ 40-704. Mayor to establish fees for storing impounded vehicles.

The Mayor of the District of Columbia is authorized to establish from time to time a reasonable fee to be charged for the cost of storing impounded vehicles. Such storage fee shall not be charged for the first 24 hour period in which a vehicle is impounded. (1973 Ed., § 40-603.1; Sept. 12, 1978, D.C. Law 2-104, § 505, 25 DCR 1275.)

Legislative history of Law 2-104. — See note to § 40-703.

§ 40-705. Appeal from assessment of excise tax for title certificates; election of remedies.

Any person aggrieved by the assessment of any tax imposed by § 40-703 (j) may, within 6 months from the date the person entitled to a certificate of title was notified of the amount of such tax, appeal to the Superior Court of the District of Columbia in the same manner and to the same extent as set forth in §§ 47-3303, 47-3304, 47-3306, 47-3307 and 47-3308, and as the same may hereafter be amended. (May 27, 1949, 63 Stat. 129, title III, ch. 146, § 303; July 29, 1970, 84 Stat. 573, 581, Pub. L. 91-358, title I, §§ 156(a), 161(d)(2); 1973 Ed., § 40-605-1.)

§ 40-706. Mayor may enter into interstate agreement concerning enforcement of traffic laws.

The Mayor of the District of Columbia may enter into an interstate agreement with the Commonwealth of Virginia or with the State of Maryland, or with both, pursuant to which the parties to such agreement may assist each other in the enforcement of its laws relating to traffic (including parking violations). (June 30, 1972, 86 Stat. 392, Pub. L. 92-327, § 2; 1973 Ed., § 40-603-2.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-707. Office of Registrar of Titles and Tags.

The employee of the Department of Transportation who is charged with the immediate responsibility for, and exercises supervision over, the issuance of tags and certificates of title and the registration of motor vehicles and trailers shall be known as the Registrar of Titles and Tags. (June 28, 1944, 58 Stat. 527, ch. 300, § 1; 1973 Ed., § 40-603a.)

Department of Vehicles and Traffic abolished. — See note to § 40-703.

§ 40-708. Issuance of congressional tags.

After June 28, 1944, no part of any District of Columbia appropriations shall be available for any expense for or incident to the issuance of congressional tags except to those persons set out in § 40-703, including the Speaker and the Vice President. (June 28, 1944, 58 Stat. 532, ch. 300, § 8; 1973 Ed., § 40-603b.)

§ 40-709. Issuance of duplicate congressional tags.

Each Senator, member of the House of Representatives, and other individual who is authorized by law to be issued a congressional tag for his automobile shall, upon application therefor, be entitled to be issued a duplicate tag bearing the same number. (1973 Ed., § 40-603c; Aug. 5, 1977, 91 Stat. 684, Pub. L. 95-94, title IV, § 410.)

§ 40-710. Parking space for members of Congress.

On and after June 29, 1956, the Council of the District of Columbia is authorized and directed to designate, reserve, and properly mark appropriate and sufficient parking spaces on the streets adjacent to all public buildings in such District for the use of members of Congress engaged on public business. (June 29, 1956, 70 Stat. 447, ch. 479, § 1; 1973 Ed., § 40-604.)

Cross references. — As to issuance of congressional tags, see § 40-703.

As to regulation of public off-street parking facilities, see §§ 40-801 to 40-810.

As to parking restrictions on public and private property, see §§ 40-812 and 40-813.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(300) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-711. Parking of automobiles in Municipal Center; regulations; violations and penalties.

(a) The Council of the District of Columbia is authorized, in its discretion, to permit such officers and employees of the District of Columbia government as the Council may select to park motor vehicles in any building or buildings now or hereafter erected upon squares no. 490, 491, and 533, and reservation no. 10, in the District of Columbia, known as the Municipal Center, and to make regulations, which the Mayor shall enforce, for the control of the parking of such vehicles, including the authority to prescribe fees and charges, which the Mayor shall collect, for the privilege of parking of such vehicles.

(b) The Council is further authorized, in its discretion, to permit the public to park motor vehicles in such portion or portions of squares no. 490, 491, and 533, and reservation no. 10, in the District of Columbia, known as the Municipal Center, as may be set apart by the said Council for such purpose, and to make such regulations, which the Mayor shall enforce, as the Council may deem advisable for the control of parking in such portion or portions of the Municipal Center as the Council may set apart for such purpose, including authority to restrict the privilege of parking therein to persons having

business in the Municipal Center, and to make regulations, which the Mayor shall enforce, to prohibit parking in all portions of the Municipal Center not set apart by the Council for such purpose. The Council is further authorized in its discretion, to prescribe fees and charges, which the Mayor shall collect, for the privilege of parking motor vehicles in such portion or portions of the Municipal Center as may be set apart for such purpose, and, to aid in the collection of such fees and charges and the enforcement of such regulations, the Mayor may install mechanical parking meters or devices.

(c) The Council is further authorized to prescribe reasonable penalties of fine not to exceed \$25 or imprisonment not to exceed 10 days for the violation of any regulation promulgated under the authority of this section. (June 6, 1940, 54 Stat. 241, ch. 253, §§ 1, 2, 3; 1973 Ed., § 40-604a.)

Cross references. — As to deposit of fees in General Fund, see § 40-809.

Section references. — This section is referred to in §§ 40-806 and 40-809.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(301, 302, 303) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also

pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Delegation of functions. — Reorganization Order No. 18, dated October 23, 1952, created in the Department of General Administration under the direction and control of the Director of General Administration, an Administrative Services Office. This office was assigned the duties of maintaining records of space allotted to District employees for parking privately owned motor vehicles on District or Federal property and also to review requests for and make recommendations for assignments and execute control of approved assignments. Reorganization Order No. 18 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVA of which continued the Administrative Services Office and the parking functions thereof. The Administrative Services Office and the functions stated in Part IVA of Organization Order No. 3 were transferred to the Director of the Department of General Services by Commissioner's Order No. 69-96, dated March 7, 1969.

§ 40-712. Speeding and reckless driving.

(a) No vehicle shall be operated at a greater rate of speed than permitted by the regulations adopted under the authority of this subchapter.

(b) Any person who drives any vehicle upon a highway carelessly and heedlessly in willful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving.

(c) Any individual violating any provision of this section where the offense constitutes reckless driving shall upon conviction for the 1st offense be fined not more than \$250 or imprisoned not more than 3 months, or both; and upon conviction for the 2nd or any subsequent offense committed within 2 years

from the date of any such previous offense such individual shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

(d) Any individual violating any provision of this section, except where the offense constitutes reckless driving, shall be subject to a civil fine under the District of Columbia Traffic Adjudication Act (D.C. Code § 40-601 et seq.). (Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 9; July 3, 1926, 44 Stat. 814, ch. 739, § 5; Feb. 27, 1931, 46 Stat. 1427, ch. 317, § 4; June 24, 1936, 49 Stat. 1901, ch. 749; Nov. 25, 1942, 56 Stat. 1023, ch. 642, § 1; 1973 Ed., § 40-605; Sept. 12, 1978, D.C. Law 2-104, § 601, 25 DCR 1275; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138.)

Cross references. — As to inapplicability of Alcoholic Beverage Control Act, see § 25-127.

As to Mayor's authority to make rules and regulations, see § 40-703.

As to reporting of convictions, see § 40-720.

Section references. — This section is referred to in §§ 3-421, 23-581, 25-127, 40-612, and 40-720.

Legislative history of Law 2-104. — Law 2-104 was introduced in Council and assigned Bill No. 2-195, which referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-215 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-145. — See note to § 40-703.

Editor's notes. — Because of the codification of Title IX of D.C. Law 11-198 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 7 as subchapter I, "subchapter" has been substituted for "chapter" in subsection (a).

Definitions applicable. — For definitions applicable in this section, see § 40-702.

Right to jury trial. — One charged with driving an automobile recklessly, and so as to endanger property and individuals, has a right to a jury trial. *District of Columbia v. Colts*, 282 U.S. 63, 51 S. Ct. 52, 75 L. Ed. 177 (1930).

Unreasonable speed and changing lanes without caution were not essential elements of reckless driving but were distinct and separate offenses, and acquittal by a jury of the charge of reckless driving did not preclude conviction by the court on charges of unreasonable speed and of changing lanes without caution and accordingly there was no valid basis for a claim of double jeopardy. *Swales v. District of Columbia*, App. D.C., 219 A.2d 100 (1966).

Offenses not committed in presence of officer. — A defendant's arrest by a United States Park Police officer for the offenses of operating an automobile in excess of speed limit and while under the influence of intoxi-

cating liquor was invalid where the offenses were not committed in the presence of or within view of the officer. *District of Columbia v. Perry*, App. D.C., 215 A.2d 845 (1966).

Deprivation of right to summation. — Where trial court mistakenly read the entire definition of reckless driving to jury rather than merely the portion of this section with which defendant was charged, defendant's summation was spent solely in asserting his innocence under the portion of this section with which he was not charged, and trial court subsequently gave instruction limited to applicable portion, defendant's decision to argue nonapplicable portion of this section was tactical choice, and thus defendant was not deprived of right to make final summation to jury. *Murray v. District of Columbia*, App. D.C., 358 A.2d 651 (1976).

Withdrawal of inapplicable portion of instruction. — Where the trial court had mistakenly instructed jury as to both the offenses of speeding and reckless driving under this section, it was not improper for trial court to call the jury from its deliberations and withdraw from jury's consideration inapplicable portions of court's previous overinclusive instruction. *Murray v. District of Columbia*, App. D.C., 358 A.2d 651 (1976).

Review of fine. — Where the fine was imposed for speeding and was within the statutory limitation, appellate court has no right to disturb it. *Seidenberg v. District of Columbia*, App. D.C., 71 A.2d 607 (1950).

Evidence sufficient to sustain conviction. — Where the arresting officer testified that he had paced the defendant for about 2 blocks at a speed varying from 33 to 38 miles per hour, it cannot be said that the trial judge was wrong in making a finding of guilt. *Seidenberg v. District of Columbia*, App. D.C., 71 A.2d 607 (1950).

There was substantial evidence to support convictions for driving at an unreasonable speed and changing lanes without caution even though the jury had found the defendant not guilty of driving while intoxicated or recklessly, and the fact that the trial court chose to believe

statements of police officers rather than denials of defendant did not compel reversal of convictions. *Swales v. District of Columbia*, App. D.C., 219 A.2d 100 (1966).

Where there was testimony that defendant was racing his car against his companion's car, that he ran a stop sign, that he was speeding, and that he failed to stop for police, evidence was sufficient to sustain reckless driving conviction. *Kennedy v. District of Columbia*, App. D.C., 601 A.2d 2 (1991).

Cited in *Smallwood v. District of Columbia*,

17 F.2d 210 (D.C. Cir. 1927); *District of Columbia v. Bailey*, 18 F.2d 367 (D.C. Cir. 1927); *Paschal v. District of Columbia*, App. D.C., 206 A.2d 402 (1965); *Mahoney v. United States*, 420 F.2d 253 (D.C. Cir. 1969); *United States v. Covington*, App. D.C., 459 A.2d 1067 (1983); *District of Columbia v. McConnell*, App. D.C., 464 A.2d 126 (1983); *District of Columbia v. Colston*, App. D.C., 468 A.2d 954 (1983); *District of Columbia v. Clark*, App. D.C., 468 A.2d 961 (1983).

§ 40-713. Negligent homicide.

Any person who, by the operation of any vehicle in a careless, reckless, or negligent manner, but not wilfully or wantonly, shall cause the death of another, including a pedestrian in a marked crosswalk, or unmarked crosswalk at an intersection, shall be guilty of a felony, and shall be punished by imprisonment for not more than 5 years or by a fine of not more than \$5,000 or both. (Mar. 3, 1901, ch. 854, § 802(a); June 17, 1935, 49 Stat. 385, ch. 266; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 160(a)(3); 1973 Ed., § 40-606; Sept. 14, 1982, D.C. Law 4-145, § 8, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 14, 29 DCR 5753; Oct. 9, 1987, D.C. Law 7-34, § 3, 34 DCR 5316.)

Section references. — This section is referred to in §§ 40-612, 40-714, 40-715, and 40-717.1.

Effect of amendments. — D.C. Law 7-34 deleted "at an immoderate rate of speed or" following "vehicle" and inserted "including a pedestrian in a marked crosswalk, or unmarked crosswalk at an intersection."

Legislative history of Law 4-145. — See note to § 40-703.

Legislative history of Law 4-174. — Law 4-174 was introduced in Council and assigned Bill No. 4-398, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-257 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-34. — See note to § 40-726.

Section constitutional. — This section specifies with sufficient certainty the conduct which it is intended to proscribe and punish and hence comes within the requirements of constitutionality. *United States v. Henderson*, 121 F.2d 75 (D.C. Cir. 1941).

This section was unambiguously designed to protect individual victims; gra-

vamen of crime is not act of operating motor vehicle negligently, but rather, killing of human being. *Murray v. United States*, App. D.C., 358 A.2d 314 (1976).

Elements of crime. — In a prosecution for negligent homicide, the corpus delicti consisted of the death of a human being by the instrumentality of a motor vehicle operated at an immoderate rate of speed or in a careless, reckless, or negligent manner but not willfully or wantonly. *Ercoli v. United States*, 131 F.2d 354 (D.C. Cir. 1942); *Solar v. United States*, App. D.C., 94 A.2d 34 (1953).

In a prosecution for negligent homicide, the government must prove 3 elements: (1) the death of a human being; (2) by the instrumentality of motor vehicle; and (3) the vehicle's operation at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not willfully or wantonly. *Stevens v. United States*, App. D.C., 249 A.2d 514 (1969).

Burden of proving causal connection. — In a prosecution for negligent homicide, the causal connection between injuries received in an automobile accident by decedent and his death must be proven beyond a reasonable doubt. *Stevens v. United States*, App. D.C., 249 A.2d 514 (1969).

Circumstantial, as well as direct evidence, may supply sufficient corrobora-

tion of the corpus delicti in cases of negligent homicide. *Solar v. United States*, App. D.C., 94 A.2d 34 (1953).

Consideration of acts of other drivers in determining defendant's negligence. — If a defendant drove his vehicle at an immoderate rate of speed and such act was the proximate or direct cause of death of the deceased who was riding in another automobile with which the defendant's vehicle collided, defendant was not relieved from guilt of negligent homicide because the negligence of the driver of the automobile concurred in producing the result, though acts of other drivers were to be considered so far as they shed light on question of defendant's negligence, but if negligence of other driver was sole cause of decedent's death, defendant was entitled to an acquittal. *Prezzi v. United States*, App. D.C., 62 A.2d 196 (1948).

Two defendants charged in single information. — Where, as a consequence of collision of bus and an automobile, deceased motorist was struck by bus or such automobile, or both, joinder of both bus driver and driver of automobile in the same information in prosecution for statutory negligent homicide was proper, and refusal of separate trials was not an abuse of discretion. *Miciotto v. United States*, 198 F.2d 951 (D.C. Cir. 1952).

Joint trial. — Where the driver of an automobile collided with a bus at an intersection, and either the automobile or the bus or both struck a 2nd automobile with such force that the driver was thrown from it and killed, the case was a proper one in which to order a joint trial of bus driver and driver of 1st automobile for negligent homicide. *Simcic v. United States*, App. D.C., 86 A.2d 98 (1951), *aff'd sub nom. Miciotto v. United States*, 198 F.2d 951 (D.C. Cir. 1952).

Evidence insufficient to establish causal connection between accident and death. — Evidence that a decedent who died of a coronary occlusion 5 weeks after an automobile accident, who was debilitated by the injuries sustained in the accident and that it was possible that his state of debility precipitated the heart attack was insufficient to establish causal connection between injuries sustained in the accident and death and did not support a conviction for negligent homicide. *Stevens v. United States*, App. D.C., 249 A.2d 514 (1969).

Instructions sufficient. — In a prosecution for negligent homicide by the driver of a bus which collided with the automobile in which the decedent was riding, instructions not to ignore other drivers' action because whether defendant was driving at an immoderate rate of speed depended upon all other circumstances, and that if defendant was driving at such speed, then he was 1 of the causes of the accident, and that if driver of another automobile also caused the accident would make no

difference but that defendant was not responsible for acts of the other drivers, were sufficient. *Prezzi v. United States*, App. D.C., 62 A.2d 196 (1948).

In a joint prosecution of bus driver and driver of automobile under this section, the court sufficiently charged with respect to element of causation as to automobile driver, where at the outset of the instruction the court carefully told the jury that the charge was that defendants operated the bus and automobile at an immoderate rate of speed and in such a careless, reckless, and negligent manner as to cause the death of the deceased, and that in order to convict driver of automobile, jury was required first to find that in operation of automobile he violated the law in 1 of the particulars charged and that such operation was a proximate cause of the death of the deceased. *Simcic v. United States*, App. D.C., 86 A.2d 98 (1951), *aff'd sub nom. Miciotto v. United States*, 198 F.2d 951 (D.C. Cir. 1952).

Instruction in joint trial properly refused. — In a prosecution of bus driver and driver of automobile for negligent homicide, the court properly refused to give an instruction requested by the driver of the automobile that to justify a finding of guilt, the jury must find beyond a reasonable doubt not only that the driver of the automobile drove the automobile at an immoderate rate of speed or negligently, but also that such immoderate rate of speed or such negligence directly and proximately caused death of deceased, since instruction was an erroneous and incomplete statement. *Simcic v. United States*, App. D.C., 86 A.2d 98 (1951), *aff'd sub nom. Miciotto v. United States*, 198 F.2d 951 (D.C. Cir. 1952).

Trial court's comment constituted reversible error. — In a prosecution for negligent homicide, the trial court's comment that in its opinion, and as a matter of common sense, if immoderate speed was established, such speed caused the death, which contradicted or at least materially weakened a previous instruction respecting immoderate speed, and which had a strong tendency to eliminate from the jury the question of whether the acts of the driver of the other automobile were the sole cause of the collision, was reversible error. *Prezzi v. United States*, App. D.C., 62 A.2d 196 (1948).

Consecutive prison terms within discretion of court. — Imposition of consecutive 1-year terms of imprisonment on 2 negligent homicide convictions of a motorist arising out of an automobile accident was within discretionary power of trial court. *Murray v. United States*, App. D.C., 358 A.2d 314 (1976).

Acquittal of negligent homicide not res judicata of traffic charge. — A judgment of acquittal of defendant charged with negligent homicide, a crime against United States, was not res judicata of a charge of failing to give full

time and attention to operation of motor vehicle in violation of traffic and motor vehicle regulations of the District although both charges arose out of same accident. *Randolph v. District of Columbia*, App. D.C., 156 A.2d 686 (1959).

Nor does double jeopardy bar trial of traffic charge after acquittal. — The principle of double jeopardy does not preclude prosecution of a defendant on a traffic charge after he had been acquitted of the charge of negligent homicide when both charges arose out of the same accident. *Randolph v. District of Columbia*, App. D.C., 156 A.2d 686 (1959).

Cited in *Sanderson v. United States*, App. D.C., 125 A.2d 70 (1956); *Williams v. United States*, App. D.C., 228 A.2d 846 (1967); *United States v. Young*, App. D.C., 237 A.2d 542 (1968); *United States v. Kramer*, App. D.C., 286 A.2d 856 (1972); *Cooper v. United States*, App. D.C., 353 A.2d 696 (1975); *Cartwright v. Hyatt Corp.*, 460 F. Supp. 80 (D.D.C. 1978); *Comber v. United States*, App. D.C., 584 A.2d 26 (1990); *Purcell v. United States*, App. D.C., 594 A.2d 527 (1991); *Hawkins v. District of Columbia*, 124 WLR 1125 (Super. Ct. 1996); *United States v. Day*, App. D.C., 697 A.2d 31 (1997).

§ 40-714. Negligent homicide included in manslaughter where death due to operation of vehicle.

The crime of negligent homicide defined in § 40-713 shall be deemed to be included within every crime of manslaughter charged to have been committed in the operation of any vehicle, and in any case where a defendant is charged with manslaughter committed in the operation of any vehicle, if the jury shall find the defendant not guilty of the crime of manslaughter such jury may, in its discretion, render a verdict of guilty of negligent homicide. (Mar. 3, 1901, ch. 854, § 802(b); June 17, 1935, 49 Stat. 385, ch. 266; 1973 Ed., § 40-607.)

Section references. — This section is referred to in § 40-715.

Cited in *Morris v. District of Columbia*, 124

F.2d 284 (D.C. Cir. 1941); *Comber v. United States*, App. D.C., 584 A.2d 26 (1990).

§ 40-715. Immoderate speed not dependent on legal rate of speed.

In any prosecution under § 40-713 or 40-714, whether the defendant was driving at an immoderate rate of speed shall not depend upon the rate of speed fixed by law for operating such vehicle. (Mar. 3, 1901, ch. 854, § 802(c); June 17, 1935, 49 Stat. 385, ch. 266; 1973 Ed., § 40-608.)

This section manifests intent that speed shall be determined as a fact from all surrounding circumstances, and does not expressly prohibit evidence of speed regula-

tions which are admissible as one of the circumstances for the jury, in determining the question of immoderate speed. *Prezzi v. United States*, App. D.C., 62 A.2d 196 (1948).

§ 40-716. Fleeing from scene of accident; driving under the influence of liquor or drugs.

(a)(1) Any person operating a vehicle, who shall injure any person therewith, or who shall do substantial damage to property therewith and fail to stop and give assistance, together with his name, place of residence, including street and number, and the name and address of the owner of the vehicle so operated, to the person so injured, or to the owner of such property so damaged, or to the operator of such other vehicle, or to any bystander who shall request such information on behalf of the injured person, or, if such owner or operator is not present, then he shall report the information above required to a police

station or to any police officer within the District immediately. In all cases of accidents resulting in injury to any person, the operator of the vehicle causing such injury shall also report the same to any police station or police officer within the District immediately.

(2) Any operator whose vehicle causes personal injury to an individual and who fails to conform to the above requirements shall, upon conviction of the 1st offense, be fined not more than \$500, or shall be imprisoned not more than 6 months, or both; and upon the conviction of his 2nd or subsequent offense, shall be fined not more than \$1,000, or shall be imprisoned not more than 1 year, or both.

(3) Any operator whose vehicle causes substantial damage to any other vehicle or property and fails to conform to the above requirements, shall, upon conviction of the 1st offense, be fined not more than \$100, or be imprisoned not more than 30 days, or both; and for the 2nd or any subsequent offense, be fined not more than \$300, or be imprisoned not more than 90 days, or both.

(b)(1) No individual shall, when the individual's blood contains .10% or more, by weight, of alcohol (or when .48 micrograms or more of alcohol are contained in 1 milliliter of his breath, consisting of substantially alveolar air), or defendant's urine contains .13% or more, by weight, of alcohol, or under the influence of intoxicating liquor or any drug or any combination thereof, operate or be in physical control of any vehicle in the District. No individual under 21 years of age shall, when the individual's blood, breath, or urine contains any measurable amount of alcohol, operate or be in physical control of any vehicle in the District. Any individual violating any provision of this paragraph, upon conviction for the first offense, unless the individual has previously been convicted for a violation of paragraph (2) of this subsection, shall be fined \$300 and in addition may be imprisoned for not more than 90 days; upon conviction for the second offense, or for the first offense following a previous conviction for a violation of paragraph (2) of this subsection, within a 15-year period, shall be fined an amount not less than \$1,000 and not more than \$5,000 and in addition may be imprisoned for not more than 1 year; and, upon conviction for the third or any subsequent offense, or for the second offense following a previous conviction for a violation of paragraph (2) of this subsection, within a 15-year period, shall be fined an amount not less than \$2,000 and not more than \$10,000 and in addition may be imprisoned for not more than 1 year.

(2) No individual shall, while the individual's ability to operate a vehicle is impaired by the consumption of intoxicating liquor, operate or be in physical control of any vehicle in the District. Any individual violating any provision of this paragraph, upon conviction for the first offense, unless the individual has previously been convicted for a violation of paragraph (1) of this subsection, shall be fined not less than \$200 and not more than \$300 and in addition may be imprisoned for not more than 30 days; upon conviction for the second offense, or for the first offense following a previous conviction for a violation of paragraph (1) of this subsection, within a 15-year period, shall be fined an amount not less than \$300 and not more than \$500 and in addition may be imprisoned for not more than 90 days; and, upon conviction for the third or any subsequent offense, or for the second offense following a previous conviction for

a violation of paragraph (1) of this subsection, within a 15-year period, shall be fined an amount not less than \$1,000 and not more than \$5,000 and in addition may be imprisoned for not more than 1 year.

(3) All fines imposed pursuant to this subsection shall be used exclusively for the enforcement and prosecution of the District traffic alcohol laws.

(4) Convictions under this subsection prior to September 14, 1982 shall constitute a prior offense under paragraph (1) of this subsection if the individual's previous conviction occurred within 15 years of the conviction pursuant to this act.

(5) The Corporation Counsel of the District of Columbia, or his assistants, shall prosecute violations of this subsection, in the name of the District of Columbia. The Corporation Counsel is authorized to request that a person who is charged with a violation of any provision of paragraph (1) of this subsection agree, as a condition to acceptance into a diversion program in lieu of prosecution, to pay the District of Columbia or its agents a reasonable fee for the costs to the District of the person's participation in the diversion program; provided, that the Corporation Counsel shall set the fee by rule and at a level which the Corporation Counsel determines will not unreasonably discourage persons from entering the diversion program. The Corporation Counsel may reduce or waive the fee if it finds that the person is indigent. The Mayor shall determine the provider, the content, and eligibility requirements for any diversion program.

(b-1)(1) A law enforcement officer who has reasonable grounds to believe that a person is or has been violating subsection (b) of this section, without making an arrest or issuing a violation notice, may request the person to submit to a preliminary breath test, to be administered by the officer, who shall use a device which the Mayor has by rule approved for that purpose.

(2) Before administering the test, the officer shall advise the person to be tested that the test is voluntary and that the results of the test will be used to aid in the officer's decision whether to arrest the person.

(3) The results of the preliminary breath test shall be used by the officer to aid in the decision whether to arrest the person. Except as provided in subsection (d) of this section, the results of the test shall not be used as evidence by the District in any prosecution, and shall not be admissible in any judicial proceeding.

(4) The results of the test may be used, and shall be admissible, in any judicial or other proceeding in which the validity of the arrest or the conduct of the officer is an issue.

(c) Any violation of any provision of law or regulation issued thereunder which is repealed or amended by this subchapter, and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal or amendment, be prosecuted to the same extent as if this subchapter had not been enacted.

(c-1)(1) Except as provided in paragraph (2) of this subsection, when a law enforcement officer arrests a person for a violation of any provision of subsection (b) of this section, the officer shall cause the motor vehicle which the arrested person operated or controlled to be impounded.

(2) The officer shall not cause the vehicle to be impounded if:

(A) A registered owner of the vehicle authorizes the officer to release the vehicle to a person:

- (i) Who is in the company of the arrested person;
- (ii) Who has in his or her immediate possession a valid permit to operate a motor vehicle; and
- (iii) Whom the officer determines to be in physical condition to operate the vehicle without violating subsection (b) of this section;

(B) A registered owner of the vehicle:

- (i) Is present to take custody of the vehicle;
- (ii) Has in his or her immediate possession a valid permit to operate a motor vehicle; and
- (iii) Is determined by the officer to be in physical condition to operate the vehicle without violating subsection (b) of this section; or

(C) The arrested person authorizes the officer to release the vehicle to a person:

- (i) Who is not in the company of the arrested person;
- (ii) Who has in his or her immediate possession a valid permit to operate a motor vehicle;
- (iii) Whom the officer determines to be in physical condition to operate the vehicle without violating subsection (b) of this section; and
- (iv) Who shall take possession of the vehicle within a reasonable period of time from a public parking space to be determined by the arresting officer.

(3)(A) Except as provided in paragraph (4) of this subsection or in subparagraph (B) of this paragraph, an impounded vehicle shall be released:

- (i) At any time to a registered owner of the vehicle, other than the arrested person; or
- (ii) 24 hours after the arrest, to the arrested person.

(B) No vehicle shall be released to a person unless a law enforcement officer determines that the person is in physical condition to operate a motor vehicle without violating subsection (b) of this section.

(C) If the law enforcement officer has a reasonable doubt that the person is in the physical condition required by subparagraph (B) of this paragraph, the officer may direct that a chemical test be administered to determine the person's blood-alcohol or blood-drug content. The results of the test may not be used as evidence in any criminal proceeding. If the person refuses to submit to a chemical test, the officer may determine that the person does not meet the condition of subparagraph (B) of this paragraph.

(4) Any motor vehicle that is impounded shall be subject to an impoundment charge of \$50, which shall be paid prior to the release of the motor vehicle. Any motor vehicle that remains impounded and unclaimed for more than 72 hours shall be processed and handled as an abandoned vehicle, and shall be subject to any other charges and costs, including storage fees and relocation costs, as are otherwise provided and assessed by the Mayor.

(5)(A) Except as provided in subparagraph (B) of this paragraph, neither the District of Columbia nor any employee of the District of Columbia shall be

liable for injury to persons or damage to property which results from any act or omission in the implementation of any provision of this subsection.

(B) An employee of the District of Columbia may be liable for injury or damage which results from the gross negligence of the employee. If the act or omission of the employee which constitutes gross negligence occurred while the employee was engaged in furthering the governmental interest of the District of Columbia, the District of Columbia may also be liable for the resulting injury or damage.

(d) The Mayor or his designated agent shall revoke the operator's permit or the privilege to drive a motor vehicle in the District of Columbia, or revoke both such permit and privilege, of any person who is convicted in the District of any of the following offenses:

(1) Operating or being in control of a vehicle while the individual's blood or breath contains .10 percent or more, by weight, of alcohol, or the individual's urine contains .13 percent or more, by weight, of alcohol, or while under the influence of intoxicating liquor or any drug or any combination thereof.

(2) Any homicide committed by means of a motor vehicle.

(3) Leaving the scene of an accident in which the motor vehicle driven by him was involved and in which there is bodily injury, without giving assistance or making known his identity and address and the identity and address of the owner of said vehicle.

(4) Reckless driving or operating or being in physical control of a vehicle while the ability to operate is impaired by the consumption of intoxicating liquor involving bodily injury.

(5) Any felony in the commission of which a motor vehicle is involved.

(e) Whenever a judgment of conviction of any offense set forth in subsection (d) of this section has become final, the clerk of the court in which the judgment was entered shall certify such conviction to the Mayor or his designated agent, who shall thereupon take the action required by subsection (d) of this section. A judgment of conviction shall be deemed to have become final for the purposes of this subsection:

(1) If no appeal is taken from the judgment, upon the expiration of the time within which an appeal could have been taken; or

(2) If an appeal is taken from the judgment, the date upon which the judgment, having been sustained, can no longer be appealed from or reviewed on a writ of certiorari. (Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 10; Feb. 27, 1931, 46 Stat. 1427, ch. 317, § 4; Dec. 15, 1944, 58 Stat. 805, ch. 588; Aug. 16, 1954, 68 Stat. 732, ch. 741, §§ 7, 8; 1973 Ed., § 40-609; Aug. 5, 1981, D.C. Law 4-29, § 604(b)(1), 28 DCR 3081; Sept. 14, 1982, D.C. Law 4-145, §§ 5, 7, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, §§ 10, 11, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 4(c), 38 DCR 7274; Sept. 11, 1993, D.C. Law 10-12, § 3, 40 DCR 4020; Feb. 5, 1994, D.C. Law 10-68, § 32, 40 DCR 6311; May 24, 1994, D.C. Law 10-122, § 3, 41 DCR 1658.)

- I. General Consideration.
- II. Fleeing the Scene of an Accident.
- III. Driving Under the Influence of Liquor or Drugs.

I. GENERAL CONSIDERATION.

Cross references. — As to inapplicability of Alcoholic Beverage Control Act to this section, see § 25-127.

As to convictions to be reported, see § 40-720.

Section references. — This section is referred to in §§ 3-421, 23-581, 25-127, 40-612, 40-717.1, 40-717.2, and 40-720.

Legislative history of Law 4-29. — Law 4-29 was introduced in Council and assigned Bill No. 4-123, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 9, 1981, it was assigned Act No. 4-51 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-145. — See note to § 40-703.

Legislative history of Law 4-174. — See note to § 40-713.

Legislative history of Law 9-96. — See note to § 40-702.

Legislative history of Law 10-12. — Law 10-12, the “Underage Drinking Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-261. The Bill was adopted on first and second readings on May 4, 1993, and June 1, 1993, respectively. Signed by the Mayor on June 16, 1993, it was assigned Act No. 10-40 and transmitted to both Houses of Congress for its review. D.C. Law 10-12 became effective on September 11, 1993.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 10-122. — Law 10-122, the “Alcoholic Beverage Control Act and Rules Reform Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-207, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 21, 1994, it was assigned Act No. 10-214 and transmitted to both Houses of Congress for its review. D.C. Law 10-122 became effective on May 24, 1994.

References in text. — “This act”, referred to at the end of subsection (b)(4), means the District of Columbia Traffic Act, 1925.

Mayor authorized to issue rules. — See note to § 40-717.1.

Implementation of authority under Law 4-145. — See Mayor’s Order 83-234, September 30, 1983.

Editor’s notes. — Paragraph (4) of subsection (d) is set forth exactly as amended by D.C. Law 4-145. The phrase “involving bodily injury” appearing at the end of the paragraph should probably appear following the phrase “reckless driving” at the beginning of the paragraph.

Because of the codification of Title IX of D.C. Law 11-198 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 7 as subchapter I, “subchapter” has been substituted for “chapter” twice in (c).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Validity of (d)(5). — It is not to be implied that because of the seeming irrelevance of a regulation based on paragraph (d)(5) of this section to the promotion of traffic safety that this statutory provision is of questionable validity. Legislatures in almost every state have imposed various civil disabilities upon persons convicted of felonies, e.g., depriving them of the right to vote, serve on juries, or hold public office. Hence, if a legislative body in the exercise of its power to legislate decides to impose another civic disability — forfeiture of the right to drive a car — upon convicted felons, its right to do so is virtually immune from challenge, barring constitutional considerations. It is quite another thing, however, to say that an

executive body, empowered only to promulgate traffic regulations, could implement this provision, as such a regulation would be impermissibly broad. *Reynolds v. District of Columbia*, App. D.C., 614 A.2d 1285 (1992).

Elements of the crime. — Suggestion that a conviction can occur only where there is proof of impairment based on the manner in which the vehicle was actually operated, finds no support in this section or case law. *Miller v. District of Columbia*, App. D.C., 517 A.2d 1068 (1986).

To establish an offense under paragraph (b)(1), the government must prove that the person had the required blood alcohol content while operating or in control of the vehicle. *Ransford v. District of Columbia*, App. D.C., 583 A.2d 186 (1990).

Operating or being in control of a vehicle. — Where direct evidence showed that appellant alone was in the car, that he was sitting behind the steering wheel, and that the car keys were given to him when he was released only hours later, the trier-of-fact could reasonably find that appellant was in control of the vehicle under this section. *Berger v. District of Columbia*, App. D.C., 597 A.2d 407 (1991).

“Operating” and being in “physical control” of a vehicle are not separate crimes, but rather separate methods for committing the crime of driving under the influence. *Berger v. District of Columbia*, App. D.C., 597 A.2d 407 (1991).

The absence of movement of the car or a warm engine is not dispositive of being “in physical control of” a vehicle. *Berger v. District of Columbia*, App. D.C., 597 A.2d 407 (1991).

Discussion of warrantless arrest for driving under the influence, see *District of Columbia v. Schram*, 112 WLR 165 (Super. Ct. 1984).

Miranda warnings. — Evidence was sufficient to establish that statements made by defendant to police officers and results of sobriety tests administered at the scene of an accident were not made while the defendant was under arrest or while he was in custodial interrogation, thus Miranda warnings were not required and motion to suppress the statements and test results was denied. *District of Columbia v. Hobo*, 117 WLR 1133 (Super. Ct. 1989).

Test result not irrebuttable evidence of violation. — Test result of .10 percent or more blood alcohol content is not irrebuttable evidence of violation of this section; the trier of fact must also consider any evidence that the testing device was not functioning or not being operated properly, as well as any other relevant evidence tending to show that the accused did not have as much as .10 percent blood alcohol content, e.g., evidence that he had not consumed enough alcohol in the relevant time period to reach that level, or evidence of behavior inconsistent with such a blood alcohol level.

Washington v. District of Columbia, App. D.C., 538 A.2d 1151 (1988).

Cited in *Seher v. District of Columbia*, 95 F.2d 118 (D.C. Cir. 1938); *District of Columbia v. Buckley*, 128 F.2d 17 (D.C. Cir.), cert. denied, 317 U.S. 658, 63 S. Ct. 57, 87 L. Ed. 529 (1942); *Penwell v. District of Columbia*, App. D.C., 31 A.2d 891 (1943); *Kruse v. District of Columbia*, App. D.C., 171 A.2d 752 (1961); *Neary v. Hertz Corp.*, 231 F. Supp. 480 (D.D.C. 1964); *Kelly v. District of Columbia*, App. D.C., 233 A.2d 503 (1967); *Hall v. District of Columbia*, App. D.C., 353 A.2d 296 (1976); *District of Columbia v. McConnell*, App. D.C., 464 A.2d 126 (1983); *District of Columbia v. Clark*, App. D.C., 468 A.2d 961 (1983); *District of Columbia v. Lynn*, 111 WLR 2149 (Super. Ct. 1983); *Marshall v. District of Columbia*, App. D.C., 498 A.2d 190 (1985); *Hammond v. United States*, App. D.C., 501 A.2d 796 (1985); *Stowell v. District of Columbia Dep't of Transp.*, App. D.C., 514 A.2d 438 (1986); *Rong Yao Zhou v. Jennifer Mall Restaurant, Inc.*, App. D.C., 534 A.2d 1268 (1987); *Newspapers, Inc. v. Metropolitan Police Dep't*, App. D.C., 546 A.2d 990 (1988); *United States v. O'Brien*, 116 WLR 2117 (Super. Ct. 1988); *Dailey v. District of Columbia*, App. D.C., 554 A.2d 339 (1989); *Staten v. United States*, App. D.C., 562 A.2d 90 (1989); *Young v. Sherwin-Williams Co.*, App. D.C., 569 A.2d 1173 (1990); *District of Columbia v. Washington*, 118 WLR 1573 (Super. Ct. 1990); *Purcell v. United States*, App. D.C., 594 A.2d 527 (1991); *Bethard v. District of Columbia*, App. D.C., 650 A.2d 651 (1994); *District of Columbia v. Morrissey*, App. D.C., 668 A.2d 792 (1995); *District of Columbia v. Laible*, 125 WLR 777 (Super. Ct. 1997).

II. FLEEING THE SCENE OF AN ACCIDENT.

Subsection (a) of this section is not invalid on ground that it is indefinite because it provides no guide to a motorist for determination of what constitutes substantial damage. *Scott v. District of Columbia*, App. D.C., 55 A.2d 854 (1947).

Subsection (a) of this section was intended to discourage and punish hit and run drivers. *Scott v. District of Columbia*, App. D.C., 55 A.2d 854 (1947).

Defendant's actions fulfilled statutory requirements. — Fact that defendant stopped and parked her automobile at the nearest available point, when informed of the accident, at a distance not exceeding 150 feet from the point where the collision occurred and furnished all the necessary information, is all that this section requires. *Oden v. District of Columbia*, 79 F.2d 175 (D.C. Cir. 1935).

Substantial damage. — A motorist who ran into a parked vehicle, mashing in its rear

bumper, damaging trunk and skirt, knocking out speedometer, and driving vehicle up and over sidewalk into lamp post caused "substantial damage" within the meaning of subsection (a) of this section. *Scott v. District of Columbia*, App. D.C., 55 A.2d 854 (1947).

Admitted failure of defendant to report automobile accident to police station or officer justified conviction, and the failure of the prosecution to establish the additional charge that defendant failed to stop, give name and residence would not invalidate verdict or sentence. *Carpenter v. District of Columbia*, App. D.C., 32 A.2d 251 (1943).

Failure to prove costs of repairing damage. — Motorist being prosecuted for leaving the scene of an accident was not entitled to have the prosecution dismissed because of government's failure to prove cost of repairing damage, where there was evidence that motorist caused substantial damage. *Scott v. District of Columbia*, App. D.C., 55 A.2d 854 (1947).

In the prosecution of a motorist for causing substantial property damage and leaving scene of collision without disclosing his identity, evidence disclosed substantial damage to other vehicle even though there was no proof of cost of repairing the other vehicle. *Russell v. District of Columbia*, App. D.C., 118 A.2d 519 (1955).

Evidence tending to identify defendant as driver of striking vehicle was insufficient to sustain conviction for colliding with another vehicle and leaving after colliding. *Peterson v. District of Columbia*, App. D.C., 171 A.2d 95 (1961).

Evidence sufficient to sustain conviction. — In view of fact that this section's definition of the offense of leaving after colliding and causing personal injury does not quantify injury, in view of complaining witness' testimony that he sustained personal injury when the defendant's vehicle hit him and that the defendant left the scene of the accident without asking whether the witness was injured, and in view of the defendant's own testimony admitting that he saw such witness push himself away from the car with his hand, evidence is sufficient to sustain conviction of leaving scene of accident after colliding and causing personal injuries. *Tuchman v. District of Columbia*, App. D.C., 370 A.2d 1321 (1977).

III. DRIVING UNDER THE INFLUENCE OF LIQUOR OR DRUGS.

Driving while impaired is not a lesser-included offense of driving while under the influence. — A person may not be convicted of the former when charged only with the latter. *Scott v. District of Columbia*, App. D.C., 539 A.2d 1085 (1988).

The charge of driving under the influence is an alternative, although not a lesser-included,

charge to driving while intoxicated; the former must be proven by precise, admissible, test results, while the latter does not require such test results. *District of Columbia v. Kaiser*, 125 WLR 1753 (Super. Ct. 1997).

This section emphasizes physical conditions which render one a dangerous motorist, rather than whether such conditions resulted from matters within the driver's control. *Bodoh v. District of Columbia Bureau of Motor Vehicle Serv.*, App. D.C., 377 A.2d 1135 (1977).

Degree of intoxication. — It is not necessary to be drunk in order to violate this section, and the prosecution need not prove a specific degree of intoxication. *Poulnot v. District of Columbia*, App. D.C., 608 A.2d 134 (1992).

Combined effects of alcohol and drug use. — For the purpose of revoking or suspending a driver's license, a motorist is acting under the influence of alcohol even when its effect is combined with that of another cause, such as taking prescription drug. *Bodoh v. District of Columbia Bureau of Motor Vehicle Servs.*, App. D.C., 377 A.2d 1135 (1977).

Other factors irrelevant when "per se" violation established. — Where defendant's blood alcohol content was in excess of the .10 percent specified in the "per se" provision, it was irrelevant whether defendant was driving erratically, whether a defect in his automobile caused it to weave, or whether defendant's comprehension was clear at the time he drove. *Washington v. District of Columbia*, App. D.C., 538 A.2d 1151 (1988).

Warrantless arrest justified. — Where a police officer, in the early hours of the morning, heard a crash and subsequently received certain information from a citizen, he was justified in stopping defendant's automobile and making inquiries and when, after observing defendant, officer believed him to be intoxicated, he was justified in arresting defendant, without warrant, for driving while under influence of intoxicating liquor. *Johnson v. District of Columbia*, App. D.C., 119 A.2d 444 (1956).

Offense not committed in presence of arresting officer. — A defendant's arrest by a Park Police officer for the offenses of operating an automobile in excess of the speed limit and while under the influence of intoxicating liquor was invalid where offenses were not committed in presence of or within view of officer. *District of Columbia v. Perry*, App. D.C., 215 A.2d 845 (1966).

Sample size. — The phrase "an equivalent quantity of alcohol is contained in at least 2,000 cubic centimeters of his breath" establishes the means of comparing the concentration of alcohol in breath to the concentration of alcohol in blood. Accordingly, the per se offense of driving while intoxicated under subsection (b)(1) does not require proof that the breath test used a

sample of 2,000 cubic centimeters of breath. *Williams v. District of Columbia*, App. D.C., 558 A.2d 344 (1989).

Expert testimony. — Evidence of the results of blood alcohol tests administered within a reasonable time after operation of the vehicle is sufficient, without more, to establish the *per se* offense under paragraph (b)(1). *Ransford v. District of Columbia*, App. D.C., 583 A.2d 186 (1990).

Non-expert testimony of defendant's intoxication. — It was error to exclude the testimony of police officers who observed the defendant that, in their opinion, the defendant was under the influence of intoxicating liquor, on the ground that an expert may not testify to his conclusion regarding facts from which the jury are capable of drawing their own conclusions. Even though one is not an expert he may give his opinion based on personal observation as to whether a person is intoxicated. *Woolard v. District of Columbia*, App. D.C., 62 A.2d 640 (1948).

Lay witness testimony. — Lay witnesses may testify as to their opinion whether the driver of a vehicle appeared to be under the influence of alcohol, or whether a person appeared to them to be sane or insane, and the rationale for allowing lay opinion on whether an individual appeared intoxicated by alcohol or insane also calls for allowing lay opinion on whether an individual appeared to be under the influence of drugs. *Harris v. District of Columbia*, App. D.C., 601 A.2d 21 (1991).

The foundation to be laid for lay opinion testimony by an officer who has observed an allegedly impaired driver is to adduce testimony that the officer has had a reasonable amount of experience observing people who were under the influence of drugs, and that the officer had an adequate factual basis for an opinion regarding the condition of the particular defendant. *Harris v. District of Columbia*, App. D.C., 601 A.2d 21 (1991).

An officer who testifies that a person was under the influence of drugs is testifying as an observer witness on the basis of his or her firsthand knowledge, rather than as an expert. *Harris v. District of Columbia*, App. D.C., 601 A.2d 21 (1991).

Judicial notice of rate of alcohol metabolism. — Trial judge improperly took judicial notice of the rate at which an individual absorbs and metabolizes alcohol, but the error was harmless. *Poulnot v. District of Columbia*, App. D.C., 608 A.2d 134 (1992).

Evidence. — The failure to exclude the possibility that the consumption of alcohol occurred after operation goes to the weight of the test result evidence, not its admissibility. *Poulnot v. District of Columbia*, App. D.C., 608 A.2d 134 (1992).

Urine specimen is admissible at trial for driving while under the influence of intoxicating liquor despite the absence of medical supervision at time of the taking of the test. *Davis v. District of Columbia*, App. D.C., 247 A.2d 417 (1968).

Evidence of specimen analysis not violative of Fourth Amendment rights. — In a prosecution for drunken driving, the admission of the records of analysis of specimen of urine taken from the defendant who had been legally arrested and was being detained was not an infringement of defendant's rights under the Fourth Amendment, prohibiting unreasonable searches and seizures. *Novak v. District of Columbia*, App. D.C., 49 A.2d 88 (1946), *rev'd* on other grounds, 160 F.2d 588 (D.C. Cir. 1947).

Nor of Fifth Amendment rights. — The taking of a specimen of urine from a defendant who had been arrested and was being detained for drunken driving and the use in evidence of the analysis of the urine was not violative of defendant's rights under the Fifth Amendment where the specimen was given voluntarily, notwithstanding that the police officer who requested the specimen was in uniform and did not state that defendant had a right to refuse to give the sample, but did state that if sample were right it would be to the defendant's benefit. *Novak v. District of Columbia*, App. D.C., 49 A.2d 88 (1946), *rev'd* on other grounds, 160 F.2d 588 (D.C. Cir. 1947).

Proof concerning specimen analysis. — In a prosecution for driving an automobile while intoxicated, the government must prove that the urine specimen taken from defendant and the specimen analyzed by chemists and reported on in court were the same and were in substantially the same condition when tested as when taken. *Novak v. District of Columbia*, App. D.C., 49 A.2d 88 (1942), *rev'd* on other grounds, 160 F.2d 588 (D.C. Cir. 1947).

Weight given to specimen analysis. — In a prosecution for drunken driving, the weight to be given to the results of the analysis of a specimen of the defendant's urine and the medical testimony on the meaning thereof was for the jury. *Novak v. District of Columbia*, App. D.C., 49 A.2d 88 (1946), *rev'd* on other grounds, 160 F.2d 588 (D.C. Cir. 1947).

Link between drug usage and ability to operate vehicle. — The concepts of operating a motor vehicle under the influence of a drug and of "impairment" require evidence of a causal relationship between the presence of a drug in a person's body and the manner in which the person is operating a motor vehicle at the time of the alleged traffic offense. *District of Columbia v. Sellers*, 117 WLR 1017 (Super. Ct. 1989).

Medical and/or scientific testimony is not always necessary to establish a link between drug usage and the ability to operate a motor

vehicle. *District of Columbia v. Sellers*, 117 WLR 1017 (Super. Ct. 1989).

Conflicting evidence of intoxication presented issue of fact. — In a drunken driving prosecution, where the government introduced evidence of intoxication and the defendant offered medical testimony that his behavior was caused by a blackout and not by intoxication, there was an issue of fact for the trier of fact, who was not compelled to give controlling weight to such medical testimony even though no rebutting medical testimony was offered by government. *Williams v. District of Columbia*, App. D.C., 130 A.2d 596 (1957).

Withdrawal of urine analysis from jury consideration. — Where a witness for the prosecution testified that he had made an analysis of the defendant's urine, the right of the defendant was properly protected by withdrawing from the jury all consideration of the urine analysis, and the withdrawal of such evidence had the effect of showing the jury that they were to make no inference regarding the test. *Woolard v. District of Columbia*, App. D.C., 62 A.2d 640 (1948).

Policeman's conduct did not require exclusion of urine test results. — The questioning by an officer of a defendant, who was charged with driving while under influence of intoxicating liquor and who was upset and sobbing and who was told that he did not have to take urine test but that if he did not it would be his word against the policeman's, but who was not physically abused, was not conduct which was so outrageous as to require exclusion of results of urine test. *Davis v. District of Columbia*, App. D.C., 247 A.2d 417 (1968).

Invalid arrest. — Where police arrived 45 minutes after an accident, arrested the driver who was no longer in her car and administered to the driver a breathalyzer test over her objection, the arrest was invalid since no violation occurred in the presence of the police, and the breathalyzer results must be suppressed. *Schram v. District of Columbia*, App. D.C., 485 A.2d 623 (1984).

Evidence of test refusal. — When the accused contests the validity of his refusal to be tested, a pre-trial hearing must be held, at which the government will have the burden of proving the accused's refusal by a preponderance of the evidence as a prerequisite for introducing at trial evidence of such putative refusal to show consciousness of guilt. *District of Columbia v. Kaiser*, 125 WLR 1753 (Super. Ct. 1997).

Proof of operation of vehicle. — An intoxicated passenger who was sitting in the driver's seat of a parked, running car but who did not drive the car, was not guilty of violating subdivision (b)(1) of this section, which makes it unlawful for an intoxicated person to "operate or be in physical control" of a vehicle. *United*

States v. Burke, 125 WLR 2137 (Super. Ct. 1997).

Proving "operating" does not require a witness placing appellee inside of the vehicle. Appellee's admission that he had been driving the car, together with the facts that the appellee was observed by the police officer standing next to the vehicle urinating, the keys were in the ignition, the headlights were on, and the engine was running, was sufficient to establish a prima facie case of "operating" the motor vehicle. *District of Columbia v. Whitley*, App. D.C., 640 A.2d 710 (1994).

Circumstantial evidence sufficient to support conviction. — The nature of the evidence required to support a conviction for driving under the influence of a drug is not different from the sort of evidence required to support a conviction for driving under the influence of alcohol, and in both situations, circumstantial evidence will suffice, even though it does not specifically quantify the amount of the substance ingested and relate it to the ability to drive. *Harris v. District of Columbia*, App. D.C., 601 A.2d 21 (1991).

Evidence sufficient to support conviction. — See *Stevenson v. District of Columbia*, App. D.C., 562 A.2d 622 (1989); *Eilers v. District of Columbia Bureau of Motor Vehicles Servs.*, App. D.C., 583 A.2d 677 (1990).

Testimony as to the manner in which the defendant's automobile was driven, identification of the defendant as the driver, and the condition of the defendant a short time thereafter, as reported by officers, was sufficient evidence, independent of the defendant's confession, to support a conviction of operating a motor vehicle while intoxicated. *Price v. District of Columbia*, App. D.C., 54 A.2d 142 (1947).

Evidence sustained the conviction for operating automobile while under influence of intoxicating liquor and making an improper turn resulting in collision against a defendant who contended that he had not drunk but was suffering from kidney trouble, low blood pressure, ulcers and shock brought about by collision and that alleged smell of alcohol was caused by medicine. *Idler v. District of Columbia*, App. D.C., 134 A.2d 104 (1957).

Evidence sustained a conviction of operating a motor vehicle while under the influence of intoxicating liquor, where the defendant's intoxication was conceded, on the ground that the government's proof was sufficient to establish that the defendant operated the vehicle, where the circumstantial evidence in support of the admission by the defendant had the effect of placing him in the driver's position immediately following the accident. *McKnight v. District of Columbia*, App. D.C., 141 A.2d 922 (1958).

To establish that a person is guilty of viola-

tion under the so-called “per se” offense of driving “while intoxicated,” the District is required to prove only that the person was operating a vehicle in the District of Columbia while the person’s blood contained .10 percent or more alcohol (or while the person’s urine contained .13 percent or more alcohol). *Washington v. District of Columbia*, App. D.C., 538 A.2d 1151 (1988).

A conviction for driving “under the influence” can rest on an accumulation of evidence other than a test result showing .10 percent blood alcohol content, e.g., evidence of erratic driving by the accused, slurred speech, odor of alcohol on the breath, and evidence of a blood alcohol content of .05 percent or more. *Washington v. District of Columbia*, App. D.C., 538 A.2d 1151 (1988).

Evidence of defendant’s erratic and dangerous operation of his vehicle was sufficient for an impartial trier of fact to rationally find defendant guilty of driving while under the influence of intoxicating liquor. *Poulnot v. District of Columbia*, App. D.C., 608 A.2d 134 (1992).

Revocation of operator’s permit following conviction. — Where it was mandatory to

revoke the defendant’s operator’s permit when notified of his conviction of operating a motor vehicle while intoxicated, the defendant was not entitled to a hearing on the matter of revocation and administrative review. *Oliver v. Silver*, App. D.C., 155 A.2d 719 (1959).

Assessment of points for conviction outside District. — Where a driver had been convicted in Virginia of driving while under the influence of intoxicating liquors, and such conviction had been certified to the District, and where, as a result of such certification, driver’s total points under the point system of regulation exceeded 12 thereby permitting revocation of driver’s operator’s permit, there was no abuse of discretion in allowing the points to be assessed for the conviction outside the District, since, if the incident had occurred in the District, it would have meant mandatory revocation of driver’s permit without exercise of any discretion by Director, without a hearing and without reference to any point system. *Council v. Director of Motor Vehicles*, App. D.C., 159 A.2d 874 (1960).

§ 40-717. **Prima facie evidence of intoxication; relevant evidence of use of intoxicating liquor.**

Repealed. Sept. 14, 1982, D.C. Law 4-145, § 11(a), 29 DCR 3138.

Legislative history of Law 4-145. — See note to § 40-703.

§ 40-717.1. **Prima facie evidence of intoxication.**

If as a result of the operation of a vehicle, any person is tried in any court of competent jurisdiction within the District of Columbia for operating such vehicle while under the influence of any intoxicating liquor or while the ability to operate a vehicle is impaired by the consumption of intoxicating liquor in violation of § 40-716(b), negligent homicide in violation of § 40-713, or manslaughter committed in the operation of such vehicle in violation of § 22-2405 and in the course of such trial there is received in evidence, based upon a chemical test, competent proof to the effect that at the time of such operation:

(1) Defendant’s blood contained less than .05%, by weight, of alcohol, or defendant’s urine contained less than .06%, by weight, of alcohol, or that at the time of the test less than .24 micrograms of alcohol were contained in 1 milliliter of his or her breath, consisting of substantially alveolar air, this evidence shall not establish a presumption that the defendant was or was not, at the time, under the influence of intoxicating liquor, but it may be considered with other competent evidence in determining whether the defendant was under the influence of intoxicating liquor; and

(2) Defendant's blood contained .05 or more, by weight, of alcohol, or defendant's urine contained .06% or more, by weight, of alcohol, or that at the time of the test, .24 micrograms or more of alcohol were contained in 1 milliliter of his or her breath, consisting of substantially alveolar air, this evidence shall constitute prima facie proof that the defendant was, at the time, under the influence of intoxicating liquor and that, while the defendant was operating or in physical control of a vehicle, his or her ability to operate a vehicle was impaired by the consumption of intoxicating liquor. (Sept. 14, 1982, D.C. Law 4-145, § 2, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-714, §§ 4, 5, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 2(a), 38 DCR 7274; Feb. 5, 1994, D.C. Law 10-68, § 33, 40 DCR 6311.)

Cross references. — As to implied consent to chemical tests to determine blood alcohol content, see Chapter 5 of this title.

Legislative history of Law 4-145. — See note to § 40-703.

Legislative history of Law 4-174. — See note to § 40-713.

Legislative history of Law 9-96. — See note to § 40-702.

Legislative history of Law 10-68. — See note to § 40-716.

Mayor authorized to issue rules. — Section 12 of D.C. Law 4-145 provided that the

Mayor shall issue rules to implement the provisions of the act.

Accumulation of evidence other than test result. — A conviction for driving "under the influence" can rest on an accumulation of evidence other than a test result showing .10 percent blood alcohol content, e.g., evidence of erratic driving by the accused, slurred speech, odor of alcohol on the breath, and evidence of a blood alcohol content of .05 percent or more. *Washington v. District of Columbia*, App. D.C., 538 A.2d 1151 (1988).

Cited in *Ransford v. District of Columbia*, App. D.C., 583 A.2d 186 (1990).

§ 40-717.2. Admissibility of test results.

An official copy of the results of any blood, urine, or breath test performed on a person by a technician or by a police officer shall be admissible as substantive evidence, without the presence or the testimony of the technician or of the police officer who administered the test, in any proceeding in which that person is charged with a violation of § 40-716(b); provided, that the police officer or the technician certifies that the breath test was conducted in accordance with the manufacturer's specifications, and that the equipment on which the breath test was conducted has been tested within the past 3 months and has been found to be accurate or, in the case of a blood or urine specimen, that the test of the specimen has been certified to be accurate by the chief toxicologist, Office of the Chief Medical Examiner or his or her designee; provided, further, that the person on whom any blood, urine, or breath test has been performed, or that person's attorney, may seek to compel the attendance and the testimony of the technician or of the police officer in any proceeding by stating, in writing, the reasons why the accuracy of the test result is in issue and by requesting, in writing, at least 15 days in advance of the proceeding, that such technician or such police officer appear and testify in the proceeding. Any such person upon whom a blood, urine, or breath test is performed, shall be informed, in writing, of the provisions of this section at the time that such person is charged. After having been informed, failure to give timely and proper notice shall constitute a waiver of the person's (on whom the test has been performed) right to the presence and testimony of the technician or the police officer. (Sept.

14, 1982, D.C. Law 4-145, § 3, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 6, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 2(b), 38 DCR 7274.)

Legislative history of Law 4-145. — See note to § 40-703.

Legislative history of Law 4-174. — See note to § 40-713.

Legislative history of Law 9-96. — See note to § 40-702.

Mayor authorized to issue rules. — See note to § 40-717.1.

Legislative intent. — Legislators contemplated the use of chemical test forms, in place of the actual printout at trial, to serve as credible verification of alcohol test results; to require that the actual printout be submitted in court would render this section less effective than anticipated by the legislature. *District of Columbia v. Laible*, 125 WLR 777 (Super. Ct. 1997).

Additional requirements. — Once the requirements of this section are met, the tests are admissible; because of this legislative determination of the pre-conditions for admissibility, the government need not, in addition, satisfy the test established in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). *Williams v. District of Columbia*, App. D.C., 558 A.2d 344 (1989).

Test admissibility. — This provision permits verification of blood alcohol tests by use of the PD 809 Chemical Test Certification form and the PD 29 Implied Consent form; they are admissible as evidence and fulfill the purpose of the best evidence rule. *District of Columbia v. Laible*, 125 WLR 777 (Super. Ct. 1997).

Subpoena on test technician. — Nothing in this section prevents a defendant from serv-

ing a subpoena on the technician in order to obtain the technician's testimony. *Washington v. District of Columbia*, App. D.C., 538 A.2d 1151 (1988).

Request for technician's testimony. — Trial court did not abuse its discretion in denying defendant's request for the technician's testimony. *Washington v. District of Columbia*, App. D.C., 538 A.2d 1151 (1988).

Alcohol content at time of operation. — In a prosecution for driving while intoxicated, the government is required to prove beyond a reasonable doubt that the accused had a blood alcohol content (b.a.c.) of .10 percent or more at the time he operated the vehicle, as opposed to a b.a.c. of .10 percent or more whenever a chemical test is administered thereafter. *District of Columbia v. Bennou*, 116 WLR 2685 (Super. Ct. 1988).

The focus of all the drunk driving laws is the time of operation. *District of Columbia v. Bennou*, 116 WLR 2685 (Super. Ct. 1988).

The court cannot conclude beyond a reasonable doubt, based solely on results of chemical tests administered sometime after the defendant's operation of a vehicle, that his blood alcohol content at the time he operated the vehicle was .10 percent or more. *District of Columbia v. Bennou*, 116 WLR 2685 (Super. Ct. 1988).

Cited in *District of Columbia v. Lynn*, 111 WLR 2149 (Super. Ct. 1983); *Ransford v. District of Columbia*, App. D.C., 583 A.2d 186 (1990).

§ 40-718. Smoke screens prohibited.

(a) No individual shall knowingly:

(1) Have in his possession any device designed to cause the emission from a motor vehicle of a dense mass of smoke commonly called a smoke screen;

(2) Use or permit the use of any such device in the operation of any motor vehicle; or

(3) Have in his possession or control any motor vehicle equipped with any such device or specially fitted for the attachment thereto of any such device.

(b) Any individual violating any provision of this section shall be guilty of a felony and upon conviction shall be punished by imprisonment in the penitentiary for a term of not less than 1 year nor more than 5 years. (Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 11; 1973 Ed., § 40-610; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138.)

Section references. — This section is referred to in § 40-612.

Legislative history of Law 4-145. — See note to § 40-703.

Definitions applicable. — For definitions applicable in this section, see § 40-702.

Prosecution by United States Attorney. — This chapter provides for the punishment of

violations at the instance of the Corporation Counsel and excludes the United States Attorney from any prosecutions except those for smoke-screen felonies under this section. *Persham v. United States*, 104 F.2d 249 (D.C. Cir. 1939).

§ 40-718.1. Tinted windows prohibited.

(a) Except as provided in subsection (b) of this section, no motor vehicle may be operated or parked upon the public streets or spaces of the District of Columbia with:

(1) A front windshield or front side windows that allow less than 70% light transmittance; or

(2) A rear windshield or rear side windows that allow less than 50% light transmittance.

(b) A motor vehicle may be operated or parked upon the public streets of the District of Columbia with a front windshield that allows less than 70% light transmittance above the AS-1 line, or within 5 inches from the top of the windshield.

(c) Any person who operates or parks a motor vehicle in violation of subsection (a) of this section shall be issued a \$50 citation.

(d)(1) Except as provided by subsection (f) of this section, any motor vehicle found to violate subsection (a) of this section shall be required to be inspected at an official District Inspection Station within 5 business days after the finding.

(2) If the motor vehicle is not brought into compliance with subsection (a) of this section by the end of the 5-day period, the owner of the vehicle shall be fined not more than \$1,000.

(e)(1) Except as provided by subsection (f) of this section, any motor vehicle found to violate subsection (a) of this section on a second or subsequent occasion shall be required to be inspected at an official District Inspection Station within 5 business days after the second or subsequent finding.

(2) If the motor vehicle is not brought into compliance with subsection (a) of this section by the end of the 5-day period, the owner of the vehicle may be fined not more than \$5,000.

(f) Any police officer or other authorized government agent of the District may order the immediate removal of a motor vehicle from the public streets to an official District Inspection Station if the police officer or other authorized government agent determines that the health and safety of the public is at risk due to window tinting in violation of subsection (a) of this section.

(g) No person shall install window tinting on a motor vehicle which is not exempt pursuant to subsection (h) of this section, in the District of Columbia which would cause the motor vehicle to violate subsection (a) of this section if the vehicle were operated or parked on the public streets of the District of Columbia.

(h) Limousines, ambulances, buses and hearses, meeting the requirements of 18 DCMR 413.10, church-owned vehicles, and all official government vehicles, shall be exempt from the requirements of this section.

(i) Nothing in this subchapter shall be construed to modify or affect any federal law concerning the window tinting of motor vehicles that is applicable to manufacturers, importers, dealers, or motor vehicle repair businesses for

new or used motor vehicles and equipment. (Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 11a, as added Aug. 26, 1994, D.C. Law 10-163, § 2, 41 DCR 4886.)

Legislative history of Law 10-163. — Law 10-163, the “Motor Vehicle Tinted Window Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-422, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No.

10-276 and transmitted to both Houses of Congress for its review. D.C. Law 10-163 became effective on August 26, 1994.

Editor’s notes. — Because of the codification of Title IX of D.C. Law 11-198 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 7 as subchapter I, “subchapter” has been substituted for “chapter” in subsection (i).

§ 40-719. Garage keeper to report cars damaged in accidents.

The individual in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident or struck by bullets shall report to a police station within 24 hours after such motor vehicle is received, giving the make of the motor vehicle, the engine number, the registry number, and the name and address of the owner or operator of such motor vehicle. Any such individual failing so to report shall, upon conviction thereof, be fined not less than \$25 nor more than \$100 for each offense. (Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 12; 1973 Ed., § 40-611; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138.)

Legislative history of Law 4-145. — See note to § 40-703.

Definitions applicable. — For definitions applicable in this section, see § 40-702.

§ 40-720. Convictions to be reported.

All convictions under §§ 40-302, 40-703, 40-712, and 40-716 shall be reported by the Clerk of the Court to the Mayor or his designated agent. (Feb. 27, 1931, 46 Stat. 1429, ch. 317, § 5; 1973 Ed., § 40-612.)

Cross references. — As to inapplicability of Alcoholic Beverage Control Act to this section, see § 25-127.

Section references. — This section is referred to in § 25-127.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-721. Control over park system not affected by this chapter.

Nothing contained in this subchapter shall be construed to interfere with the exclusive charge and control prior to March 3, 1925, committed to the Director

of the National Park Service over the park system of the District, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control, subject to the penalties prescribed in this subchapter. (Mar. 3, 1925, 43 Stat. 1126, ch. 443, § 16(b); July 3, 1926, 44 Stat. 835, ch. 760, § 3; 1973 Ed., § 40-613.)

Cross references. — As to regulation of traffic in public parks and playgrounds, see § 8-105.

As to rules and regulations, see § 40-703.

Editor's notes. — Because of the codification of Title IX of D.C. Law 11-198 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 7 as subchapter I, "subchapter" has been substituted for "chapter" twice.

Transfer of functions. — By Executive Order No. 6166, dated June 10, 1933, the Office of Public Buildings and Public Parks of the National Capital was changed to National Parks, Buildings, and Reservations. Act of March 2, 1934, 48 Stat. 389, ch. 38, § 1, abolished National Parks, Buildings, and Reservations and transferred its powers and duties to the National Park Service.

Transit system's franchise did not give it absolute monopoly of sightseeing service on Capitol Mall and it does not protect system against competition from concessionaire acting

under contract with Secretary of Interior. *Universal Interpretive Shuttle Corp. v. Washington Metro. Area Transit Comm'n*, 393 U.S. 186, 89 S. Ct. 354, 21 L. Ed. 2d 334 (1968).

Secretary of Interior has exclusive authority to regulate interpretive tour service operated under contract with Department of Interior, and service therefor is immune from enforcement of District of Columbia licensing and registration requirements. *District of Columbia v. Landmark Servs., Inc.*, 416 F. Supp. 559 (D.D.C.), modified, 419 F. Supp. 91 (D.D.C.), modified sub nom. *United States v. District of Columbia*, 571 F.2d 651 (D.C. Cir. 1977).

Certificate of convenience and necessity is not required of a concessionaire under contract with Secretary of Interior to conduct bus tours of Capitol Mall from Washington Metropolitan Area Transit Commission. *Universal Interpretive Shuttle Corp. v. Washington Metro. Area Transit Comm'n*, 393 U.S. 186, 89 S. Ct. 354, 21 L. Ed. 2d 334 (1968).

§ 40-722. Repeal of certain prior laws; saving clause.

(a) The provisions of the act entitled "An Act regulating the speed of automobiles in the District of Columbia, and for other purposes," approved June 29, 1906 (34 Stat. 621, ch. 3615), and, in so far as they relate to the regulation of vehicles or vehicle traffic in the District, the provisions of the act entitled "An act to authorize the Commissioners of the District of Columbia to make police regulations for the government of said District," approved January 26, 1887 (24 Stat. 369, ch. 49) and of the joint resolution entitled "Joint resolution to regulate licenses to proprietors of theaters in the city of Washington, District of Columbia, and for other purposes," approved February 26, 1892 (27 Stat. 394, Res. 4, 7) and of the act entitled "An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30th, 1918, and for other purposes," approved March 3, 1917 (39 Stat. 1064, ch. 160), are repealed. The provisions of § 20 of the Act entitled "An Act to prevent the manufacture and sale of alcoholic liquors in the District of Columbia, and for other purposes," approved March 3, 1917 (39 Stat. 1129, ch. 165), shall not apply to any person operating any motor vehicle in the District.

(b) Any violation of any provision of law or regulation issued thereunder which is repealed by this subchapter and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal, be prosecuted to the same extent as if this subchapter had

not been enacted. (Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 16(a), (c); 1973 Ed., § 40-614.)

Editor's notes. — Because of the codification of Title IX of D.C. Law 11-198 as subchapter II of this chapter, and the designation of the

preexisting text of Chapter 7 as subchapter I, "subchapter" has been substituted for "chapter" twice in (b).

§ 40-723. Severability.

If any provision of this subchapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the subchapter and the applicability of such provision to other persons and circumstances shall not be affected thereby. (Mar. 3, 1925, 43 Stat. 1126, ch. 443, § 18; 1973 Ed., § 40-615.)

Editor's notes. — Because of the codification of Title IX of D.C. Law 11-198 as subchapter II of this chapter, and the designation of the

preexisting text of Chapter 7 as subchapter I, "subchapter" has been substituted for "chapter" twice.

§ 40-724. Parking meters.

(a) The Mayor of the District of Columbia is hereby authorized and empowered, in his discretion, to secure and to install experimentally, at no expense to the said District, mechanical parking meters or devices on the streets, avenues, roads, highways, and other public spaces in the District of Columbia under the jurisdiction and control of said Mayor, such installations to be limited to a linear footage not to exceed the total of the perimeters of 4 normally sized squares in such District; and the Council of the District of Columbia is authorized and empowered to make, and the Mayor to enforce rules and regulations for the control of the parking of vehicles on such streets, avenues, roads, highways, and other public spaces, and as an aid to such regulation and control of the parking of vehicles the Council may prescribe fees for the privilege of parking vehicles where said meters or devices are installed.

(b) The Mayor is further authorized and empowered to pay the purchase-price and cost of installation of the said meters or devices from the fees collected, which are hereby appropriated for such purpose, for the fiscal years 1938 and 1939, and thereafter such meters or devices shall become the property of said District, and all fees collected shall be paid to the Collector of Taxes for deposit in the Treasury of the United States to the credit of the revenues of said District. (April 4, 1938, 52 Stat. 192, ch. 62, § 11; 1973 Ed., § 40-616.)

Cross references. — As to rules and regulations, see § 40-703.

As to additional parking meters and devices, see § 40-805.

As to deposit of fees in General Fund, see § 40-809.

Section references. — This section is referred to in §§ 1-2466, 40-805 and 40-809.

Change in government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(304) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished

the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

§ 40-725. Loitering of public cabs.

The loitering of public cabs and hacks or vehicles of all descriptions around or in front of the hotels, theaters, or public buildings in the District of Columbia, either by stopping, except to take on or discharge a passenger, or unnecessarily slow driving, is hereby prohibited, and any driver of any such cab or hack who willfully causes the same to loiter either by stopping or slow driving as aforesaid shall be deemed guilty of a misdemeanor and punished in the Superior Court of the District of Columbia by a fine of not less than \$10 nor more than \$40 for such offense. The Council of the District of Columbia is hereby authorized and empowered to make any regulations that may be necessary in furtherance of the purpose of this section, and the Mayor of the District of Columbia is hereby given authority to revoke the license of the driver of any public hack or cab who is convicted of a violation of this section.

It shall be unlawful for any keeper or proprietor or agent acting for the keeper or proprietor of any licensed hotel in the District of Columbia to exclude any District licensed taxicab driver from picking up passengers at any hackstand or other location where taxicabs are regularly allowed to pick up passengers on the hotel premises.

Violation of this provision shall be punishable by a fine not to exceed \$300, or imprisonment for not more than 90 days, or both, for each violation hereof. (July 11, 1919, 41 Stat. 104, ch. 7, § 12; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 40-617; Mar. 31, 1982, D.C. Law 4-89, § 3, 29 DCR 661.)

Cross references. — As to location of hackstands, see §§ 1-312 and 40-703.

Legislative history of Law 4-89. — Law 4-89 was introduced in Council and assigned Bill No. 4-10, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 8, 1981, and January 12, 1982, respectively. Signed by the Mayor on February 4, 1982, it was assigned Act No. 4-174 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(305) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

This section does not apply to taxicab stationed near hotel for exclusive use of hotel and its guests. *Bell v. District of Columbia*, 273 F. 315 (D.C. Cir. 1921).

Prohibition against excluding taxis from hotel hackstand does not violate due process clause. — Provision prohibiting hotel from excluding any taxicab driver from using its taxicab stand does not deprive hotel owner of its private property rights without due process nor does it work a taking of its property without just compensation. *Hilton Washington Corp. v. District of Columbia*, 593 F. Supp. 1288 (D.D.C. 1984), *aff'd*, 777 F.2d 47 (D.C. Cir. 1985).

This section supersedes police regulation, article 4, § 8, adopted April 1918. *Willis v. District of Columbia*, 295 F. 1012 (D.C. Cir. 1924).

Arrest of driver on private property. — As the space upon which the cab was standing at the time of the arrest of its driver is stipulated to have been the private property of the Washington Terminal Company, by whose authority and permission he was there, it follows that he was not then upon any public street or avenue, and consequently his presence there did not fall within the purview of an act directed against the improper use of public streets and avenues. *Reamy v. District of Columbia*, 273 F. 323 (D.C. Cir. 1921).

§ 40-726. Right-of-way at crosswalks.

(a) When official traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way to a pedestrian crossing the roadway within any marked crosswalk or unmarked crosswalk at an intersection.

(b) A pedestrian who has begun crossing on the "WALK" signal shall be given the right-of-way by the driver of any vehicle to continue to the opposite sidewalk or safety island, whichever is nearest.

(c) Any person convicted of failure to yield the right-of-way to a pedestrian or of colliding with a pedestrian shall be subject to a fine of not more than \$500, or imprisonment for not more than 30 days, or both. Any person convicted of a violation of this section may be sentenced to perform community service as an alternative to, but not in addition to, any term of imprisonment authorized by this section.

(d) The Mayor of the District of Columbia ("Mayor") shall submit to the Council of the District of Columbia ("Council") a proposed plan for an extensive public information program on the rights and responsibilities of pedestrians and drivers. This proposed plan shall include proposals for increasing police enforcement of pedestrian right-of-way laws. The proposed plan shall be submitted to the Council within 90 days of October 9, 1987, for a 45-day period

of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed plan, in whole or in part, by resolution within this 45-day review period, the proposed plan shall be deemed approved. (Oct. 9, 1987, D.C. Law 7-34, § 2, 34 DCR 5316.)

Legislative history of Law 7-34. — Law 7-34, “Pedestrian Protection Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-166, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 16, 1987 and June 30, 1987, respectively. Signed by the Mayor on July 23, 1987, it was assigned Act No. 7-62 and transmitted to both Houses of Congress for its review.

Violations of this section are not excepted by § 40-612. — Although violations of this section are not specifically excepted by § 40-612 from the Bureau of Traffic Adjudica-

tion’s jurisdiction, their omission appears to have been an oversight on the part of the Council, since this section was enacted several years after § 40-612. *Purcell v. United States*, App. D.C., 594 A.2d 527 (1991).

Jurisdiction and power to order punishment. — Whether or not this section is listed in § 40-612, the Bureau of Traffic Adjudication lacks the power to order the imprisonment that this section prescribes as a punishment for its violation, and lacks jurisdiction even to entertain charges brought under this section. *Purcell v. United States*, App. D.C., 594 A.2d 527 (1991).

Subchapter II. Automated Traffic Enforcement.

§ 40-751. Authorized; violations as moving violations; evidence; definition.

(a) The Mayor is authorized to use an automated traffic enforcement system to detect moving infractions. Violations detected by an automated traffic enforcement system shall constitute moving violations. Proof of an infraction may be evidenced by information obtained through the use of an automated traffic enforcement system. For the purposes of this title, the term “automated traffic enforcement system” means equipment that takes a film or digital camera-based photograph which is linked with a violation detection system that synchronizes the taking of a photograph with the occurrence of a traffic infraction.

(b) Recorded images taken by an automated traffic enforcement system are prima facie evidence of an infraction and may be submitted without authentication. (Apr. 9, 1997, D.C. Law 11-198, § 901, 43 DCR 4569.)

Temporary addition of section. — Section 901 of D.C. Law 11-226 added a new § 40-751 to read as follows:

“For purposes of this title, the term “automated traffic enforcement system” means equipment that takes a film or digital camera-based photograph which is linked with a violation detection system that synchronizes the taking of a photograph with occurrence of the infraction.”

Temporary amendment of section. — Section 902 of D.C. Law 11-226 renumbered this section as § 40-752.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date

of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary addition of section, see § 901 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 901 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 901 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

For temporary amendment of section, see § 902 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July

25, 1996, 43 DCR 4181), § 902 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 902 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 12-2 provides for application of the act.

Legislative history of Law 11-198. — Law 11-198, the “Fiscal Year 1997 Budget Support Act of 1996,” was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June

19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became law April 9, 1997.

Legislative history of Law 11-226. — Law 11-226, the “Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-896. The Bill was adopted on first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on December 4, 1996, it was assigned Act No. 11-453 and transmitted to both Houses of Congress for its review. D.C. Law 11-226 became effective on April 9, 1997.

§ 40-752. Liability for fines; notice of infraction; hearing.

(a) The owner of a vehicle issued a notice of infraction shall be liable for payment of the fine assessed for the infraction, unless the owner can furnish evidence that the vehicle was, at the time of the infraction, in the custody, care, or control of another person. In the event that the registered owner claims that the vehicle was in the custody, care, or control of another person, the registered owner of the vehicle shall provide evidence in a sworn affidavit, under penalty of perjury, setting forth the name and address of the person who leased, rented, or otherwise had care, custody, or control of the vehicle.

(b) When a violation is detected by an automated traffic enforcement system, the Mayor shall mail a summons and a notice of infraction to the name and address of the registered owner of the vehicle on file with the Bureau of Motor Vehicle Services or the appropriate state motor vehicle agency. The notice shall include the date, time, and location of the violation, the type of violation detected, the license plate number, and state of issuance of the vehicle detected, and a copy of the photo or digitized image of the violation.

(c) An owner or operator who receives a citation may request a hearing which shall be adjudicated pursuant to subchapter I of Chapter 6 of this title.

(d) The owner or operator of a vehicle shall not be presumed liable for violations in the vehicle recorded by an automated traffic enforcement system when yielding the right of way to an emergency vehicle, when the vehicle or tags have been reported stolen prior to the citation, when part of a funeral procession, or at the direction of a law enforcement officer. (Apr. 9, 1997, D.C. Law 11-198, § 902, 43 DCR 4569; Mar. 24, 1998, D.C. Law 12-81, § 51, 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Temporary amendment of section. — Section 902 of D.C. Law 11-226 renumbered this section as § 40-753.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date

of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 903 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 903 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43

DCR 6151), and § 903 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 12-2 provides for application of the act.

Legislative history of Law 11-198. — See note to § 40-751.

Legislative history of Law 11-226. — See note to § 40-751.

Legislative history of Law 12-81. — Law

12-81, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 40-753. Agreement with private entity to provide records and services.

The Mayor may enter an agreement with a private entity to obtain relevant records regarding registration information or to perform tasks associated with the use of an automated traffic enforcement system, including, but not limited to, the operation, maintenance, administration or mailing of notices of violations. (Apr. 9, 1997, D.C. Law 11-198, § 903, 43 DCR 4569.)

Temporary amendment of section. — Section 904 of D.C. Law 11-226 renumbered this section as § 40-754.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 904 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 904 of the Fiscal Year 1997

Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 904 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 12-2 provides for application of the act.

Legislative history of Law 11-198. — See note to § 40-751.

Legislative history of Law 11-226. — See note to § 40-751.

CHAPTER 8. REGULATION OF PARKING.

Subchapter I. General Provisions.

Sec.

- 40-801. Short title.
- 40-802. Findings and declaration of necessity.
- 40-803. Parking adjacent to neighborhood commercial centers.
- 40-804. Definitions.
- 40-805. Power of Mayor to acquire property; construct and maintain parking facilities; dispose of property; establish rates; install parking meters; make street improvements.
- 40-806. Motor Vehicle Parking Agency; creation and composition; term; powers.
- 40-807. Establishment of parking facilities.
- 40-808. Records and data available; additional surveys.
- 40-809. Deposit of fees and moneys into General Fund.

Sec.

- 40-810. Appropriations; employment of director; salaries of members of agency.
- 40-811. Acquisition of new parking facilities prohibited; operation and expansion of existing facilities; exempt facilities.
- 40-812. Parking restrictions — Vehicles impounded; abandoned and junk vehicles; penalties.
- 40-812.1. Notice to owner of abandoned or junk vehicle taken into custody.
- 40-812.2. Sale of abandoned vehicle at public auction; disposal of junk vehicles; disposition of proceeds.
- 40-813. Same — United States public buildings and property; regulations; penalties.

Subchapter II. Citizens' Advisory Task Force.

- 40-821. [Expired.]

Subchapter I. General Provisions.

Editor's notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 7-98, the preexisting text of this chapter, to

include §§ 40-801 through 40-813, has been designated as subchapter I of this chapter.

§ 40-801. Short title.

This subchapter may be cited as the "District of Columbia Motor Vehicle Parking Facility Act of 1942." (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 10; Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 603; 1973 Ed., § 40-801.)

Cross references. — As to control of vehicles, see § 8-105.

Modification of residential permit parking program. — D.C. Law 5-185 amended § 82 of the Highways and Traffic Regulations, enacted October 12, 1974 (Reg. 74-25; 18 DCMR 2411 et seq.), concerning the residential permit parking program.

D.C. Law 6-61, effective November 19, 1985, amended § 82 of the Highway and Traffic Regulations (18 DCMR 2411.1 and 2413.6).

Editor's notes. — Because of the codification of § 40-821 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

§ 40-802. Findings and declaration of necessity.

It is hereby declared that the free circulation of traffic of all kinds through the highways of the District is necessary to the health, safety, and general welfare of the public, whether residing in said District, or traveling to, through, or from said District in the course of lawful pursuits; that in recent years the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion on the highways of the District; that the parking of motor vehicles on the highways of the District has contributed to this congestion to such an extent as to interfere seriously with the primary use of such highways for the movement of traffic; that such parking prevents the

free circulation of traffic in, through, and from said District, impedes rapid and effective fighting of fires and the disposition of police forces in the District, threatens irreparable loss in valuations of property in the District, which can no longer be readily reached by vehicular traffic, and endangers the health, safety, and welfare of the general public; that this parking nuisance can be reduced by providing sufficient off-street parking facilities conveniently located in the several residential, commercial, industrial, and governmental areas of the District; that adequate off-street parking facilities have not been provided by private enterprise; that it may be necessary to supplement private parking spaces by off-street parking facilities provided by public undertaking; and that the enactment of this subchapter, as well as the use of land for the purposes set forth in this subchapter, is hereby declared to be a public necessity. (Feb. 16, 1942, 56 Stat. 90, ch. 76, § 1; 1973 Ed., § 40-802.)

Cross references. — As to District of Columbia Traffic Act, see Chapter 7 of this title.

Editor's notes. — Because of the codification of § 40-821 as subchapter II of this chap-

ter, and the designation of the preexisting text of Chapter 8 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

§ 40-803. Parking adjacent to neighborhood commercial centers.

The Council of the District of Columbia finds that:

(1) A number of traditional neighborhood commercial centers have suffered and declined;

(2) Many of these declining neighborhood commercial centers have traditionally encouraged and promoted minority entrepreneurship and employment opportunities;

(3) One of the District's goals is the revitalization of neighborhood commercial areas for the purposes of creating new jobs, increasing incomes, and increasing the availability of goods and services at the neighborhood level particularly in low- and moderate-income neighborhoods;

(4) One of the major problems hindering the revitalization of neighborhood commercial centers is the lack of adequate short-term parking facilities for shoppers; and

(5) If the District is to achieve its goal of revitalization of these commercial areas and maximize their growth potential, low-cost short-term parking must be provided in or adjacent to such centers. (Sept. 26, 1980, D.C. Law 3-108, § 2, 27 DCR 3781.)

Legislative history of Law 3-108. — Law 3-108 was introduced in Council and assigned Bill No. 3-191, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on July 15, 1980 and July 29,

1980, respectively. Signed by the Mayor on July 31, 1980, it was assigned Act No. 3-233 and transmitted to both Houses of Congress for its review.

Cited in *Frain v. District of Columbia*, App. D.C., 572 A.2d 447 (1990).

§ 40-804. Definitions.

When used in this subchapter, unless the context indicates otherwise:

- (1) The term "District" means the District of Columbia.
- (2) The term "Mayor" means the Mayor of the District of Columbia.
- (3) The term "Agency" means the Motor Vehicle Parking Agency created in § 40-806.
- (4) The term "parking facilities" means 1 or more public off-street parking areas for motor vehicles, including necessary structures.
- (5) The term "motor vehicle" means any vehicle propelled by an internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.
- (6) The term "abandoned vehicle" means any motor vehicle, trailer, or semitrailer:
 - (A) That is inoperable and left unattended on public property for more than 72 hours;
 - (B) That has remained illegally on public property for more than 72 hours;
 - (C) That has remained on public property for more than 72 hours and:
 - (i) Is not displaying current valid registration; or
 - (ii) Is displaying registration of another vehicle;
 - (D) That has remained on private property for more than 30 days and is inoperable in that 1 or more of its major mechanical components, including, but not limited to, engine, transmission, drive train, or wheels, is missing or not functional unless such vehicle is kept in an enclosed building completely shielded from the view of individuals on the adjoining properties; or
 - (E) That has remained unclaimed for 45 days after proper notice.
- (7) The term "junk vehicle" means any vehicle that is wrecked, dismantled, or in irreparable condition. (Feb. 16, 1942, 56 Stat. 91, ch. 76, § 2; 1973 Ed., § 90-803; Sept. 26, 1980, D.C. Law 3-108, § 3(a), 27 DCR 3781; Mar. 15, 1985, D.C. Law 5-176, § 8, 32 DCR 748; Feb. 28, 1996, D.C. Law 11-95, § 2, 42 DCR 7180.)

Effect of amendments. — D.C. Law 11-95, added (6) and (7).

Legislative history of Law 3-108. — See note to § 40-803.

Legislative history of Law 5-176. — Law 5-176 was introduced in Council and assigned Bill No. 5-382, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-95. — Law 11-95, the "Prohibition on Abandoned Vehicles Amendment Act of 1995," was introduced in

Council and assigned Bill No. 11-071, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 19, 1995, it was assigned Act No. 11-178 and transmitted to both Houses of Congress for its review. D.C. Law 11-95 became effective on February 28, 1996.

Editor's notes. — Because of the codification of § 40-821 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I, "subchapter" has been substituted for "chapter" in the introductory language of this section.

Motor Vehicle Parking Agency abolished. — See note to § 40-806.

§ 40-805. Power of Mayor to acquire property; construct and maintain parking facilities; dispose of property; establish rates; install parking meters; make street improvements.

The Mayor of the District of Columbia is authorized to exercise all powers necessary and convenient to carry out the purposes of this subchapter, the said purposes being hereby declared to be the acquisition, creation, and operation, in any manner hereinafter provided, under public regulations, of public off-street parking facilities in the District of Columbia as a necessary incident to insuring in the public interest the free circulation of traffic in and through the District of Columbia and to promoting the economic growth and stability of neighborhood commercial centers. Such powers include, but shall not be limited to, the powers hereinafter enumerated:

(1) The power to acquire any property, real or personal, or any interest therein, by purchase, lease, gift, bequest, devise, or grant, or by condemnation under the provisions of Chapter 13 of Title 16 in any area of the District as to which the agency shall have made a determination that public parking facilities are necessary or expedient. In the case of neighborhood municipal off-street parking, condemnation powers, under the provisions of Chapter 13 of Title 16 of the District of Columbia Code, shall not be used to acquire residential property on which there are improvements or commercial property with improvements that are in use. Before acquiring any real property for neighborhood municipal off-street parking facilities or establishing such facilities the Mayor shall hold at least 1 public hearing and request any affected advisory neighborhood commission(s) for its comments and reports within 30 days of such request. Before acquiring any area for parking facilities the Mayor shall request the National Capital Planning Commission for its recommendations and it shall be the duty of said Commission to report thereon within 30 days of such request;

(2) The power to undertake, by contract or otherwise, the clearance and improvement of any such property as well as the construction, establishment, reconstruction, alteration, repair, maintenance, and operation thereon of parking facilities; to contract, by lease or otherwise, with competitive bidding, with any individual, firm, association, or corporation, private or public, for the operation of any parking facilities for such period, not exceeding 5 years, as the Mayor shall determine, and to terminate, without prior notice, any contract in the event of any failure or omission of any party thereto to observe or enforce the rules or schedules of rates made under authority of paragraph (4) of this section. The words "such property" in this paragraph shall include, in addition to property acquired under this subchapter, any other property, heretofore or hereafter acquired by the District, until needed for the purpose for which it was acquired, or if no longer needed for the purpose for which it was acquired, or upon which parking facilities may be established without impairing its use

for the purpose for which it was acquired: Provided, that in each case the agency shall have made a determination that parking facilities thereon are necessary or expedient. Before establishing any parking facilities upon the property not acquired under authority of this subchapter, the Mayor shall request the National Capital Planning Commission for its recommendations and it shall be the duty of said Commission to report thereon within 30 days of such request;

(3) The power to sell, exchange, transfer, or assign any property, real or personal, or any interest therein, acquired under authority of this subchapter, whether or not improved; provided, that such action shall be in accordance with the general law covering the disposal of such property by the District of Columbia; provided further, that the agency shall have first determined such property to be no longer necessary for the purposes of this subchapter;

(4) The power to establish and from time to time to revise, with or without public hearings, uniform schedules of rates to be charged for use of space in each such parking facility; to provide rate differentials between said parking facilities for such reasons as the amount of space occupied, the location of the facility, and other reasonable differences; and to prescribe and promulgate such rules and regulations for the carrying out of the provisions of this subchapter as may be necessary to keep said parking facilities subject at all times to public regulation, and to insure the maintenance and operation of such parking facilities in a clean and orderly manner and in such a manner as to provide efficient and adequate service to the public. The rates to be charged for parking of motor vehicles within said parking facilities shall be fixed at the lowest possible rates, consistent with the achievement of the purposes of this subchapter, that will defray the cost of maintaining, operating, and administering the parking facilities; liquidate within such time as the Council shall determine the cost of acquiring and improving the required property for parking-facility purposes; and provide for the acquisition and improvement of other necessary parking facilities, but without any purpose of obtaining for the District any profit or surplus revenue from the operation of said parking facilities. There shall be no discrimination in rates or privileges among the members of the public using said parking facilities;

(5) The power to secure and install mechanical parking meters or parking devices on the streets, avenues, roads, highways, and other public spaces in the District under the jurisdiction and control of the said Mayor, in addition to those mechanical parking meters and devices installed pursuant to the authority conferred on the said Mayor by § 40-724, such meters or devices to be located at such points as the Mayor may determine, and the said Council is authorized and empowered to make and, the Mayor to enforce, rules and regulations for the control of parking of vehicles on such streets, avenues, roads, highways, and other public spaces, and as an aid to such regulation and control of the parking of vehicles the Council may prescribe fees for the parking of vehicles where meters or devices are installed;

(6) The power to lease on competitive bids for terms not exceeding 50 years, any property acquired pursuant to this subchapter, or any other property heretofore or hereafter acquired by the District if no longer needed for

the purpose for which it was acquired, and to stipulate in any such lease that the lessee shall erect at his or its expense a structure or structures on the land leased, which structure or structures and property shall be used, maintained and operated for the purposes of this subchapter, including purposes incidental thereto, subject to regulation as provided in paragraph (4) of this section, except that the rates for use of space in parking facilities covered by any such lease shall be fixed and regulated by the Council so as to allow to the lessee a fair return, as fixed by the Mayor, on the cost of such structure or structures, together with an amount sufficient to amortize within the term of any such lease the cost of such structure or structures. Every such lease shall be entered into upon such terms and conditions as the Mayor shall impose including, but not limited to, requirements that such structure or structures shall conform with plans and specifications approved by the Mayor, that such structure or structures shall become the property of the District upon termination or expiration of any such lease; that the lessee shall furnish security in the form of a penal bond or otherwise to guarantee fulfillment of his or its obligations, and any other requirement which, in the judgment of the Mayor, shall be related to the accomplishment of the purposes of this subchapter;

(7) The power to use moneys in the fund established by § 40-809 for the purpose of widening or channelizing streets or making other street improvements to correct or improve traffic conditions in the vicinity of off-street parking facilities, and to correct traffic conditions resulting from a lack or shortage of parking facilities. (Feb. 16, 1942, 56 Stat. 91, ch. 76, § 3; Dec. 16, 1944, 58 Stat. 808, ch. 595, § 1; June 19, 1948, 62 Stat. 565, ch. 599; Aug. 20, 1958, 72 Stat. 686, Pub. L. 85-692, § 1; July 29, 1970, 84 Stat. 587, Pub. L. 91-358, title I, § 166(g); 1973 Ed., § 40-804; Sept. 26, 1980, D.C. Law 3-108, § 3(a), (b), 27 DCR 3781.)

Cross references. — As to jurisdiction and control of street parking, see § 8-106.

As to interstate agreement concerning enforcement of traffic laws, including parking violations, see § 40-706.

As to prohibition against acquisition of new facilities, see § 40-811.

Section references. — This section is referred to in §§ 1-2466 and 40-806.

Legislative history of Law 3-108. — See note to § 40-803.

References in text. — The National Capital Park and Planning Commission was replaced by the National Capital Planning Commission pursuant to the Act of July 19, 1952, 66 Stat. 781.

Appropriations authorized. — Public Law 104-194, 110 Stat. 2362, the District of Columbia Appropriations Act, 1997, provided for construction projects an increase of \$46,923,000 (including an increase of \$34,000,000 for the highway trust fund, reallocations and rescissions for a net rescission of \$120,496,000 from local funds appropriated under this heading in prior fiscal years and an additional \$133,419,000 in Federal funds), as authorized

by §§ 43-1512 through 43-1519; §§ 43-1524, 43-1527 and 43-1654; and §§ 9-219 and 47-3404; including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: Provided, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: Provided further, That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1998, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1998:

Provided further, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

Editor's notes. — Because of the codification of § 40-821 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I, "subchapter" has been substituted for "chapter" in the introductory language and in paragraphs (2) through (4), and (6).

Presumption that everyone knows the law applies to traffic regulations just as it does to statutes. *Doing v. District of Columbia*, App. D.C., 67 A.2d 396 (1949).

Saturday afternoon not a holiday. — Where an appellant was convicted for illegal parking on a Saturday afternoon and controversy arose by reason of the fact that the parking meter bore a sign limiting parking to 1 hour, except on Sundays and holidays, his contention that Saturday afternoon was a legal holiday is without merit because Saturday is not a holiday under this section or regulations issued thereunder. *Doing v. District of Columbia*, App. D.C., 67 A.2d 396 (1949).

§ 40-806. Motor Vehicle Parking Agency; creation and composition; term; powers.

There is hereby created a Motor Vehicle Parking Agency consisting of 7 members, namely, a representative of the federal Department of Transportation, to be designated by the Secretary thereof; a representative of the National Park Service, to be designated by the Secretary of the Interior; a representative of the Department of Transportation of the District, to be designated by the Mayor, and 4 other members, each of whom shall have been a bona fide resident of the District for at least 3 years immediately preceding his appointment, to be appointed by the Mayor, without regard to race or creed. The Secretary of the Interior, the Secretary of Transportation, and the Mayor may from time to time, in his discretion, change their respective designates in office, and they shall name new designates to fill any vacancies caused by the death, resignation, or other inability to serve of their respective designates in office. The terms of the other 4 members of the agency shall be 4 years each, except that in the case of the initial appointments, 1 shall be for a term of 1 year, 1 for a term of 2 years, and 1 for a term of 3 years. In the case of any vacancy in the position of the members appointed for definite terms the same shall be filled for the remainder of the term. The said Agency shall perform the duties imposed upon it by this subchapter and such other duties as the Mayor may assign to it. The Mayor is authorized to delegate to the Agency any or all of the powers vested in the said Mayor by this subchapter, except the powers set forth in paragraphs (1) and (3) in § 40-805. The Mayor is also authorized to delegate to the Agency any or all of the powers vested in said Mayor by subsections (a) and (b) of § 40-711. (Feb. 16, 1942, 56 Stat. 92, ch. 76, § 4; Dec. 16, 1944, 58 Stat. 808, ch. 595, § 2; 1973 Ed., § 40-805; Sept. 26, 1980, D.C. Law 3-108, § 3(a), 27 DCR 3781.)

Section references. — This section is referred to in § 40-804.

Legislative history of Law 3-108. — See note to § 40-803.

Editor's notes. — Because of the codification of § 40-821 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I, "subchapter" has

been substituted for "chapter" in the fifth and sixth sentences.

Motor Vehicle Parking Agency abolished. — The Motor Vehicle Parking Agency was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. The Agency was reestablished by

Reorganization Order No. 54, dated June 30, 1953, and continued by Organization Order No. 106, dated May 17, 1955. The functions of the Motor Vehicle Parking Agency were transferred to the Department of Highways and Traffic by Commissioner's Order 72-159, dated June 22, 1972. Reorganization Plan No. 2 of 1975 combined the Department of Highways and Traffic and the Department of Motor Vehicles to form the Department of Transportation.

The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Federal Works Agency abolished. — The Federal Works Agency and the office of Federal Works Administrator were abolished and the functions thereof transferred to the Administrator of General Services by the Act of June 30, 1949, 63 Stat. 380, § 103. Certain functions of the Federal Works Administrator with respect to public roads were transferred to the Secretary of Commerce by Reorganization Plan No. 7 of 1949, and subsequently transferred to the Secretary of Transportation by § 1655 of Title 49 of the United States Code.

Department of Vehicles and Traffic abolished. — See note to § 40-703.

§ 40-807. Establishment of parking facilities.

Parking facilities may be established in any section or portion of the District except that no parking facilities shall be established upon any property zoned residential without the approval of the Zoning Commission of the District. The Zoning Commission may grant such approval only after public notice and hearing in accordance with § 5-415. Neighborhood municipal off-street parking facilities shall not be located in districts zoned C-3-B and C-R, nor shall they be established on lots on which housing currently exists. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 5; 1973 Ed., § 40-806; Sept. 26, 1980, D.C. Law 3-108, § 3(c), 27 DCR 3781; Mar. 29, 1988, D.C. Law 7-98, § 3, 35 DCR 1048.)

Legislative history of Law 3-108. — See note to § 40-803.

Legislative history of Law 7-98. — See note to § 40-821.

Mayor authorized to establish advisory committee. — Section 17 of D.C. Law 10-153 provided:

“(a) Notwithstanding any other law, in the implementation of Chapter 8 of Title 40, the Mayor shall establish an advisory committee of not more than 7 residents from the Adams Morgan community for the purpose of advising the Mayor on the size of a public parking facility to be built in the Adams Morgan com-

munity and the parking facility's compatibility with the neighborhood.

“(b) The 7 committee members shall be appointed by the Mayor with the advice and consent of the Council by resolution. If the Council does not approve the nomination of a committee member within 45 days after submission by the Mayor, the nomination shall be deemed approved.

“(c) The advisory committee shall remain in existence until such time as the Mayor determines the size and design of the parking facility or until the Mayor determines not to proceed with the parking facility.”

§ 40-808. Records and data available; additional surveys.

The National Capital Planning Commission and the Highway Planning Survey Unit shall make available such records and factual data and make such additional surveys as the Mayor or the Agency may deem necessary to carry out the purposes of this subchapter. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 6; 1973 Ed., § 40-807; Sept. 26, 1980, D.C. Law 3-108, § 3(a), 27 DCR 3781.)

Legislative history of Law 3-108. — See note to § 40-803.

Editor's notes. — Because of the codification of § 40-821 as subchapter II of this chapter, and the designation of the preexisting text

of Chapter 8 as subchapter I, “subchapter” has been substituted for “chapter” in this section.

Motor Vehicle Parking Agency abolished. — See note to § 40-806.

§ 40-809. Deposit of fees and moneys into General Fund.

All fees and other moneys collected under this subchapter, including all fees collected pursuant to §§ 40-711 and 40-724, and all moneys derived from the sale or assignment of any property, real or personal, shall be deposited in the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 7; Dec. 16, 1944, 58 Stat. 809, ch. 595, § 3; Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 601; 1973 Ed., § 40-808; Jan. 22, 1976, D.C. Law 1-42, § 3(c), 22 DCR 6312.)

Cross references. — As to General Fund, see § 47-131.

Section references. — This section is referred to in § 40-805.

Legislative history of Law 1-42. — See note to § 40-104.

Editor's notes. — Because of the codification of § 40-821 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I, "subchapter" has been substituted for "chapter" in this section.

§ 40-810. Appropriations; employment of director; salaries of members of agency.

The Mayor shall include in his annual budget such amounts as may be required from the highway fund established in § 47-2301, for the purpose of carrying out the provisions of this subchapter. The Mayor is authorized to employ a director and such other personal services as may be necessary to carry out the provisions of this subchapter. The Mayor shall fix the compensation of the members of said Agency without reference to the provisions of the Classification Act of 1923; provided, however, that the compensation of any members shall not exceed \$500 per annum; and provided further, that no compensation for services as a member of such agency shall be provided for any member who holds a salaried public office or position, in the District of Columbia or the federal government. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 8; Oct. 28, 1949, 63 Stat. 992, title XI, ch. 782, § 1106(a); Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 602; 1973 Ed., § 40-809; Mar. 3, 1979, D.C. Law 2-139, § 3205(n), 25 DCR 5740; Sept. 26, 1980, D.C. Law 3-108, § 3(a), 27 DCR 3781.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — See note to § 40-703.

Legislative history of Law 3-108. — See note to § 40-803.

Editor's notes. — Because of the codification of § 40-821 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I, "subchapter" has been substituted for "chapter" in the first and second sentences of this section.

§ 40-811. Acquisition of new parking facilities prohibited; operation and expansion of existing facilities; exempt facilities.

Notwithstanding any provision of this subchapter, no real property shall be acquired under the authority of this subchapter for use as a parking facility on or after March 2, 1962, and the Mayor and the agency are authorized to operate and maintain only those parking facilities which have been estab-

lished prior to March 2, 1962. No such existing parking facilities shall be expanded or otherwise altered except to the extent as may be necessary to permit its continued operation in the same manner as it was being operated immediately before March 2, 1962. This section shall not apply to:

(1) Any parking facility which is limited to use by officers and employees of the governments of the United States or of the District of Columbia by reason of their employment by any such government;

(2) Any fringe parking facility;

(3) Any parking facility located on property of the District of Columbia beneath any elevated portion of a public highway; and

(4) Any neighborhood off-street parking facility to promote economic growth and stability. (Feb. 16, 1942, 56 Stat. 93, ch. 76, § 10; Mar. 2, 1962, 76 Stat. 19, Pub. L. 87-408, § 603; 1973 Ed., § 40-809a; Sept. 26, 1980, D.C. Law 3-108, § 3(a), (d), 27 DCR 3781.)

Legislative history of Law 3-108. — See note to § 40-803.

Editor's notes. — Because of the codification of § 40-821 as subchapter II of this chap-

ter, and the designation of the preexisting text of Chapter 8 as subchapter I, "subchapter" has been substituted for "chapter" in the introductory language of this section.

§ 40-812. Parking restrictions — Vehicles impounded; abandoned and junk vehicles; penalties.

(a) It shall be a violation of the District of Columbia Traffic Adjudication Act of 1978 (§ 40-601 *et seq.*), to park, store, or leave a vehicle of any kind, including an abandoned or junk vehicle, whether attended or not, or for the owner of any vehicle to allow the vehicle to be parked, stored, or left, whether attended or not, upon any public or private property in the District of Columbia, including any public highway, lot, field, road, street, lane, or other property without the consent of the owner of the public or private property. The Abandoned and Junk Vehicle Division shall remove and impound any abandoned or junk vehicle that is parked, stored, or left in violation of this subchapter and keep the abandoned or junk vehicle impounded until an owner or authorized person pays the Abandoned and Junk Vehicle Division a towing fee of \$75 and a reasonable fee for storage.

(b) Any vehicle on private property, which is subject to impoundment under subsection (a) of this section, may be towed by the Abandoned and Junk Vehicle Division or a tow crane operator at the request of the private property owner or upon receipt of citizen complaint only if:

(1) A notice of a violation of subsection (a) of this section is issued against the vehicle;

(2) A tow crane operator removes the vehicle pursuant to a valid work order;

(3) The private property owner makes reasonable efforts to give notice to the owner or operator of the vehicle in violation of subsection (a) of this section regarding the whereabouts of the removed vehicle and the means of obtaining the vehicle; and

(4) The vehicle is towed to a site within the geographic boundaries of the District of Columbia wherein the vehicle is reasonably safe from the danger of

vandalism and redeemable for a reasonable cost to cover towing and any storage fees.

(c) Except as provided in this section, it shall be unlawful for any person, except the owner, a person authorized by the owner in writing, an employee of the District government in connection with the performance of official duties, or a tow crane operator who has valid, written authorization from the District government, to do any of the following:

(1) Tamper with, remove, or attempt to tamper with or remove any vehicle owned by another person;

(2) Tamper with, remove, or attempt to tamper with or remove any vehicle that is on public property and to which a District government warning notice that relates to the removal of an abandoned or junk vehicle has been affixed; or

(3) Remove, mutilate, or attempt to remove or mutilate the warning notice.

(d) Any person violating the provisions of subsections (b) and (c) of this section shall be liable for a fine of up to \$300 in addition to any civil remedies provided by law. (Jan. 15, 1942, 56 Stat. 5, ch. 4, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 40-810; Sept. 12, 1978, D.C. Law 2-104, § 504, 25 DCR 1275; Sept. 14, 1982, D.C. Law 4-146, § 2, 29 DCR 3151; Sept. 9, 1989, D.C. Law 8-24, § 7(a), 36 DCR 4575; Aug. 4, 1990, D.C. Law 8-153, § 3, 37 DCR 4042; Sept. 26, 1990, D.C. Law 8-170, § 3, 37 DCR 4839; Feb. 28, 1996, D.C. Law 11-95, § 3(a), 42 DCR 7180.)

Cross references. — As to regulations for control of vehicles, see §§ 8-105 and 40-703.

As to jurisdiction and control of street parking, see §§ 8-106 and 40-703.

Section references. — This section is referred to in §§ 1-2466 and 40-813.

Effect of amendments. — D.C. Law 11-95 rewrote this section.

Legislative history of Law 2-104. — Law 2-104 was introduced in Council and assigned Bill No. 2-195, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-215 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-146. — Law 4-146 was introduced in Council and assigned Bill No. 4-238. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-214 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-24. — Law 8-24 was introduced in Council and assigned Bill No. 8-10, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on May 16, 1989

and May 30, 1989, respectively. Signed by the Mayor on June 14, 1989, it was assigned Act No. 8-46 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-153. — Law 8-153, the “Motor Vehicle Fees Amendment Temporary Act of 1990,” was introduced in Council and assigned Bill No. 8-591. The Bill was adopted on first and second readings on May 29, 1990, and June 12, 1990, it was assigned Act No. 8-213 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-170. — Law 8-170, the “Motor Vehicle Fees Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-213, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 12, 1990, and June 26, 1990, respectively. Signed Act No. 8-235 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-95. — See note to § 40-804.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-233(c)(1), and publication in

either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

Editor's notes. — Because of the codification of § 40-821 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 8 as subchapter I, "subchapter" has been substituted for "chapter" in the first sentence of subsection (a).

Transfer of functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Allegations of complaint held sufficient. — A complaint alleging that, though the plaintiff had obtained from his landlord equal and coextensive parking privileges in an allegedly private alley adjoining business premises of the defendant, such defendant had engaged in wrongful or illegal action against plaintiff's

parking, resulting in ticketing and impounding of his automobile, was sufficient as against the defendant. *Gager v. "Bob Seidel"*, 300 F.2d 727 (D.C. Cir.), cert. denied, 370 U.S. 959, 82 S. Ct. 1612, 8 L. Ed. 2d 825 (1962).

Right to tow vehicles from parking lot. — Where the defendant removed automobiles, which either had valid license tags or were virtually undamaged and could not therefore have reasonably been regarded as abandoned, from a parking lot under authorization by property managers, who did not have authority to contract with defendant for removal of such vehicles, defendant had no right to tow away such automobiles and thus was properly found guilty of taking property without right. *Fogle v. United States*, App. D.C., 336 A.2d 833 (1975).

Cited in *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979); *Johnson v. Hobson*, App. D.C., 505 A.2d 1313 (1986); *Simms v. District of Columbia*, App. D.C., 612 A.2d 215 (1992).

§ 40-812.1. Notice to owner of abandoned or junk vehicle taken into custody.

(a) The Abandoned and Junk Vehicle Division shall send a notice by certified mail, within 5 working days after an abandoned or junk vehicle has been taken into custody, to the last known address of the owners of record of the vehicle and any lien holders of record in the Office of the Recorder of Deeds of the District of Columbia that the vehicle has been taken into custody. The notice shall:

- (1) Describe the year, make, model, and serial number of the vehicle;
- (2) Set forth the location of the facility where the vehicle is being held;
- (3) Inform the owner and any person who has a security interest in the vehicle of the right to reclaim the vehicle within 45 days after the date of the notice upon the payment of all fees incurred and towing and storage charges that resulted from placing the vehicle in custody; and

- (4) Inform the owner and any person who has a security interest in the vehicle of the right to request a hearing before the Bureau of Traffic Adjudication.

(A) If the person who was sent a notice concerning an abandoned or junk vehicle does not mail or deliver a request for a hearing within 20 days after service of the notice, the District may, without a hearing, waive the rights of the owner or person who has a security interest to exercise the right to reclaim the vehicle and may sell any abandoned vehicle at public auction or dismantle, recycle, salvage, or demolish any junk vehicle.

(B) If a respondent requests a hearing, the Bureau of Traffic Adjudication shall, within 20 days following receipt of the request, notify the respondent of the date, time, and place of the hearing.

(C) The Bureau of Traffic Adjudication shall hold the hearing not less than 15 days following the date of service of the notice, unless the Bureau and the respondent agree to the holding of the hearing at an earlier date.

(b) The Abandoned and Junk Vehicle Division shall, within 10 days of taking the vehicle into custody, publish notice in a newspaper of general circulation in the District once a week for 2 consecutive weeks, which notice shall:

- (1) Describe the year, make, model, and serial number of the vehicle;
- (2) Set forth the location of the facility where the vehicle is being held;

and

(3) Inform the owner and any person who has a security interest in the vehicle of the right to reclaim the vehicle within 45 days after the date of the notice upon the payment of all fees incurred and towing and storage charges that resulted from placing the vehicle in custody.

(c) If the records do not contain the identity or address of the owner or a person who has a security interest in the vehicle, the Abandoned and Junk Vehicle Division shall, within 10 days of taking the vehicle into custody, publish notice in a newspaper of general circulation in the District once a week for 2 consecutive weeks, which notice shall have the same contents required for notice in subsection (b) of this section, and which may contain a listing of more than 1 abandoned vehicle. (Jan. 15, 1942, ch. 4, § 1a, as added Sept. 9, 1989, D.C. Law 8-24, § 7(b), 36 DCR 4575; Feb. 28, 1996, D.C. Law 11-95, § 3(b), 42 DCR 7180.)

Effect of amendments. — D.C. Law 11-95 rewrote this section.

Legislative history of Law 8-24. — Law 8-24, “District of Columbia Abandoned and Junk Vehicle Removal Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-10, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on May 16, 1989 and May 30, 1989, respectively. Signed by the Mayor on June 14, 1989, it was assigned Act No. 8-46 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-95. — See note to § 40-804.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-233(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

§ 40-812.2. Sale of abandoned vehicle at public auction; disposal of junk vehicles; disposition of proceeds.

(a) If an abandoned vehicle has not been reclaimed, the Abandoned and Junk Vehicle Division shall sell the vehicle at public auction. The purchaser shall take title to the vehicle free and clear of all liens and claims of ownership by others, receive a sales receipt at the auction, and be entitled to, upon application, a certificate of title and registration.

(b) If a junk vehicle has not been reclaimed, the Abandoned and Junk Vehicle Division or an agent of the Division shall recycle, dismantle, salvage, or demolish the junk vehicle and deposit any proceeds into the Abandoned and Junk Vehicle Division Fund (“Fund”), established in § 40-834.

(c) The Abandoned and Junk Vehicle Division shall retain from the proceeds of the sale of the vehicle an amount that represents reimbursement for the expenses of the action and the cost of towing and storing the vehicle. Any remaining proceeds shall be deposited in the Fund to be used by the Abandoned and Junk Vehicle Division to carry out its duties.

(d) If the money collected from the sale or disposal of an abandoned or junk vehicle is insufficient to reimburse the Abandoned and Junk Vehicle Division for the costs of towing and storing the vehicle and the expenses of the disposal or sale, the last registered owner shall be liable for the deficiency. For the purposes of this subsection, the costs chargeable to an owner for the preservation and storage of a vehicle shall not exceed \$300. (Jan. 15, 1942, ch. 4, § 1b, as added Sept. 9, 1989, D.C. Law 8-24, § 7(b), 36 DCR 4575; Feb. 28, 1996, D.C. Law 11-95, § 3(c), 42 DCR 7180.)

Effect of amendments. — D.C. Law 11-95 rewrote this section.

Legislative history of Law 8-24. — See note to § 40-812.1.

Legislative history of Law 11-95. — See note to § 40-804.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the

District of Columbia to override the veto) as provided in § 1-233(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

References in text. — The “District of Columbia Abandoned and Junk Vehicle Removal Amendment Act of 1989”, referred to in (b), is D.C. Law 8-24.

§ 40-813. Same — United States public buildings and property; regulations; penalties.

Nothing contained in this section and § 40-812 shall be construed to interfere with the charge and control committed to the Administrator of General Services over the public buildings and property of the United States in the District of Columbia or any other officer charged with the custody and control of property of the United States in the District of Columbia and such officers with respect to such property, under their respective jurisdiction and control, are hereby authorized and empowered to make and enforce all regulations for the parking of vehicles upon the property of the United States in the District of Columbia (other than public highways), to remove and impound any vehicle, parked, stored, or left in violation of this section and § 40-812 and to keep the same impounded until the owner thereof, or other duly authorized person, shall deposit collateral for his appearance in court to answer for such violation, the amount of collateral to be fixed by the officer charged with the custody and control of property of the United States in the District of Columbia in an amount not to exceed \$25. Violations of regulations for the parking of cars upon the property of the United States in the District of Columbia shall be subject to the penalties prescribed in § 40-812 and all prosecutions for the violations thereof shall be upon information filed by the United States Attorney in the Superior Court of the District of Columbia. (Jan. 15, 1942, 56 Stat. 6, ch. 4, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 40-811.)

Cross references. — As to regulations for control of vehicles, see §§ 8-105 and 40-703.

As to jurisdiction and control of street parking, see §§ 8-106 and 40-703.

Section references. — This section is referred to in § 40-812.

Transfer of functions. — All functions of the Federal Works Administrator and the Commissioner of Public Buildings were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380.

Subchapter II. Citizens' Advisory Task Force.

§ 40-821. Citizens' Advisory Task Force; established.

Expired.

Legislative history of Law 7-98. — Law 7-98, "Neighborhood Municipal Off-Street Parking Facilities Amendment Act of 1987", was introduced in Council and assigned Bill No. 7-288, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on January 5, 1988 and January 19, 1988, respectively. Signed by the Mayor on February 9, 1988, it was assigned Act No. 7-142 and transmitted to both Houses of Congress for its review.

Delegation of authority pursuant to D.C. Law 7-98, "Neighborhood Municipal Off-Street Parking Facilities Amendment Act

of 1987." — See Mayor's Order 88-186, August 17, 1988.

Expiration of Citizens' Advisory Task Force. — Pursuant to subsection (h) of former § 40-821, the Citizens' Advisory Task Force, which was established by D.C. Law 7-98, was to complete its work and submit a final report with recommendations to the Mayor and the Council 4 years from March 29, 1988, on which date all authority of the Task Force would expire. The Citizens' Advisory Task Force is, therefore, deemed to have expired on March 29, 1992.

CHAPTER 8A. ABANDONED AND JUNK VEHICLE REMOVAL.

Sec.

40-831. Definitions.

40-832. Abandoned and Junk Vehicle Division established.

40-833. Junk vehicles; nuisances.

40-834. Abandoned and Junk Vehicle Division Fund.

Sec.

40-835. Jurisdiction over Blue Plains Impoundment Lot.

40-836. Rules.

§ 40-831. Definitions.

For the purpose of this chapter, the term:

(1) “Abandoned vehicle” means any motor vehicle, trailer, or semitrailer;

(A) That is inoperable and left unattended on public property for more than 72 hours;

(B) That has remained illegally on public property for more than 72 hours;

(C) That has remained on public property for more than 72 hours and:

(i) Is not displaying current valid registration; or

(ii) Is displaying registration of another vehicle;

(D) That has remained on private property for more than 30 days and is inoperable in that one or more of its major mechanical components, including, but not limited to, engine, transmission, drive train or wheels, is missing or not functional unless such vehicle is kept in an enclosed building completely shielded from the view of individuals on the adjoining properties; or

(E) That has remained unclaimed for 45 days after proper notice.

(2) “Junk vehicle” means any vehicle that is wrecked, dismantled, or in irreparable condition. (Sept. 9, 1989, D.C. Law 8-24, § 2, 36 DCR 4575; Feb. 28, 1996, D.C. Law 11-95, § 4, 42 DCR 7180.)

Section references. — This section is referred to in § 40-832.

Effect of amendments. — D.C. Law 11-95 rewrote (1).

Legislative history of Law 8-24. — See note to § 40-812.1.

Legislative history of Law 11-95. — Law 11-95, the “Prohibition on Abandoned Vehicles Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-071, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 19, 1995, it was assigned Act No. 11-178 and transmitted to

both Houses of Congress for its review. D.C. Law 11-95 became effective on February 28, 1996.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-233(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

§ 40-832. Abandoned and Junk Vehicle Division established.

(a) There is established an Abandoned and Junk Vehicle Division of the Department of Public Works (“Abandoned and Junk Vehicle Division”), which shall be responsible for the removal of any abandoned or junk vehicle from any

public or private property including any public highway. The Abandoned and Junk Vehicle Division shall:

(1) Determine whether the vehicle is an abandoned or junk vehicle in accordance with § 40-831;

(2) Determine whether the vehicle has been stolen and relinquish custody of the vehicle to the Metropolitan Police Department, if the vehicle has been stolen;

(3) Place a conspicuous warning notice on the vehicle that informs the owner that unless the vehicle is removed within 72 consecutive hours it shall be removed by the District government, if the Abandoned and Junk Vehicle Division has reason to believe that the vehicle is abandoned;

(4) Impound any abandoned vehicle, if appropriate;

(5) Notify the owner and any lien holder of record in the Office of the Recorder of Deeds of the District of Columbia that the abandoned vehicle will be sold at public auction if not reclaimed within 45 days after the date of the notice;

(6) Sell any abandoned vehicle at public auction and use the proceeds of the sale in accordance with § 40-812.2;

(7) Place a conspicuous warning notice on a junk vehicle on public property that informs the owner that the District government shall tow and transfer the vehicle and recycle, dismantle, salvage, or demolish the vehicle immediately; and

(8) Implement and enforce Chapter 6 of Title 5, with respect to a junk vehicle on private property, if the junk vehicle has been deemed a nuisance.

(b) To the fullest extent possible, the Mayor shall utilize existing personnel who are charged with public space inspection, sanitation inspection, and traffic and parking regulation enforcement responsibilities to investigate and place warning notices on abandoned and junk vehicles.

(c) The Mayor shall encourage all District government agencies and residents to identify and report abandoned and junk vehicles to the Abandoned and Junk Vehicle Division and shall, within 90 days of September 9, 1989, implement an educational campaign to accomplish this task. (Sept. 9, 1989, D.C. Law 8-24, § 3, 36 DCR 4575.)

Cross references. — As to dangerous nuisances, see § 5-604.

Section references. — This section is referred to in § 40-1721.

Legislative history of Law 8-24. — See note to § 40-812.1.

Short title. — See note to § 47-831.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review follow-

ing approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-233(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

§ 40-833. Junk vehicles; nuisances.

Any junk vehicle on private property that is a danger to the public health, safety or welfare shall be deemed a nuisance in accordance with Chapter 6 of Title 5. (Sept. 9, 1989, D.C. Law 8-24, § 4, 36 DCR 4575.)

Cross references. — As to dangerous nuisances, see § 5-604.

Legislative history of Law 8-24. — See note § 40-812.1.

Short title. — See note to § 47-831.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of

veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-233(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

§ 40-834. Abandoned and Junk Vehicle Division Fund.

(a) An Abandoned and Junk Vehicle Division Fund (“Fund”) is established to receive all money collected by the Abandoned and Junk Vehicle Division. All money collected by the Abandoned and Junk Vehicle Division shall be deposited in the Fund, in coordination with the D.C. Comptroller.

(b) Any money collected by the Abandoned and Junk Vehicle Division shall be for the sole use of the Abandoned and Junk Vehicle Division and shall be deposited as soon as practicable in the Fund.

(c) The Abandoned and Junk Vehicle Division shall pay all of its expenditures out of money deposited in the Fund.

(d) The Mayor shall submit to the Council an annual statement of the Fund’s receipts and disbursements beginning January 1, 1991. (Sept. 9, 1989, D.C. Law 8-24, § 5, 36 DCR 4575.)

Section references. — This section is referred to in § 40-812.2.

Legislative history of Law 8-24. — See note to § 40-812.1.

Short title. — See note to § 47-831.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of

veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-233(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

§ 40-835. Jurisdiction over Blue Plains Impoundment Lot.

Within 90 days of September 9, 1989, the Mayor shall transfer jurisdiction of the Blue Plains Impoundment Lot from the Metropolitan Police Department to the Department of Public Works to store and auction abandoned vehicles and submit a feasibility study with recommendations on the use of private contractors to store and auction abandoned vehicles. (Sept. 9, 1989, D.C. Law 8-24, § 8, 36 DCR 4575.)

Legislative history of Law 8-24. — See note to § 40-812.1.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the

District of Columbia to override the veto) as provided in § 1-233(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

§ 40-836. Rules.

Within 90 days from September 9, 1989, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. (Sept. 9, 1989, D.C. Law 8-24, § 11, 36 DCR 4575.)

Legislative history of Law 8-24. — See note to § 40-812.1.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as

provided in § 1-233(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

References in text. — “This act”, referred to in the first sentence, is D.C. Law 8-24.

CHAPTER 8B. PUBLIC PARKING AUTHORITY.

Sec.	Sec.
40-841. Declaration of policy.	40-846. Executive Director.
40-842. Definitions.	40-847. General powers of the Authority.
40-843. Establishment and purposes of the Public Parking Authority of the District of Columbia.	40-848. Acquisition and use of property.
40-844. Board of Directors — Establishment; Board member qualifications; term of office; removal; quorum; compensation.	40-849. Transfer of property interest between the District and the Authority.
40-845. Oaths; financial disclosure statement.	40-850. Parking System Fund.
	40-851. Parking districts.
	40-852. Revenue bonds.
	40-853. Tax exemption.
	40-854. Conflicting relationships or interests.

§ 40-841. Declaration of policy.

In an effort to combat the parking shortages in areas of the District to be defined, the Council finds it necessary to create an independent corporate body for the acquisition, construction and operation of public off-street parking facilities for motorized and nonmotorized vehicles in the District. The intent of the Council in enacting this legislation is to increase the number of public parking facilities and promote economic growth as well as encourage commercial revitalization. (Aug. 23, 1994, D.C. Law 10-153, § 2, 41 DCR 4652.)

Legislative history of Law 10-153. — Law 10-153, the “Public Parking Authority Establishment Act of 1994,” was introduced in Council and assigned Bill No. 10-532, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings

on May 3, 1994, and June 7, 1994, respectively. Signed by the Mayor on June 30, 1994, it was assigned Act No. 10-266 and transmitted to both Houses of Congress for its review. D.C. Law 10-153 became effective on August 23, 1994.

§ 40-842. Definitions.

For the purposes of this chapter, the term:

(1) “Bond” or “bonds” means any revenue bond, note, or other obligation (including refunding bonds, notes, or other obligations) to borrow money to finance, to assist in financing, or to refinance undertakings authorized by this chapter.

(2) “Parking facility” means any area, lot, structure, building, garage or other means for the storage or parking of automobiles, trucks, or other motorized or nonmotorized vehicles, including the vehicular and pedestrian access thereto, that may be established, constructed, erected, acquired, owned or leased, maintained or operated by the Authority. “Parking facility” also includes those appurtenances such as parking meters, automatic gates or security systems that may be acquired, owned, or leased by the Authority. (Aug. 23, 1994, D.C. Law 10-153, § 3, 41 DCR 4652.)

Legislative history of Law 10-153. — See note to § 40-841.

§ 40-843. Establishment and purposes of the Public Parking Authority of the District of Columbia.

(a) There is established an Authority to be known as the Public Parking Authority of the District of Columbia (“Authority”).

(b) The Authority shall be organized as a corporate body which has a legal existence separate from the District government but which is an instrumentality of the District government created to effectuate the following purposes:

(1) Identifying and assessing the public parking needs of the District; and

(2) Providing public parking facilities to serve specific geographical areas in the District and services relating to the management of those facilities, parking feasibility assessment, facility design criteria, financing, construction management and oversight, and facility management and maintenance within specific geographic areas. (Aug. 23, 1994, D.C. Law 10-153, § 4, 41 DCR 4652.)

Section references. — This section is referred to in §§ 1-1462, 40-848, and 40-849.

Legislative history of Law 10-153. — See note to § 40-841.

§ 40-844. Board of Directors — Establishment; Board member qualifications; term of office; removal; quorum; compensation.

(a) A Board of Directors (“Board”) is established to manage the affairs of the Authority.

(b) The Board shall be comprised of 5 members, one of whom shall be the Chief Financial Officer of the District. The Board chairperson and 3 other members shall be appointed by the Mayor with the advice and consent of the Council by resolution.

(c) Each member of the Board shall be a resident of the District and shall serve a 4-year term of office. Of the members first appointed to the Board, 1 member shall be appointed to a 2-year term; 2 members shall be appointed for a 3-year term; and the member appointed chairperson shall be appointed for a 4-year term. Thereafter each member shall be appointed for a 4-year term. The terms of the members first appointed shall begin on the date that a majority of the members is first established (with one of the majority being the member appointed chairperson by the Mayor), which shall become the anniversary date for all subsequent appointments.

(d) One member of the Board shall be a local business person. The remaining members of the Board shall possess expertise in transportation, parking, banking, law, finance, construction, or real estate.

(e) A vacancy on the Board shall be filled in the same manner that the original appointment was made. Any person appointed to fill a vacancy shall serve for the unexpired term of the original appointment.

(f) No member of the Board shall be appointed to serve more than 2 consecutive 4-year terms of office.

(g) The Mayor may remove a member of the Board for misconduct or neglect of duty after notice to the member.

(h) Except as otherwise provided in this subsection, 3 members of the Board shall constitute a quorum for all purposes. For matters involving a recommen-

dation for the establishment of a public parking district, 4 members shall constitute a quorum. For purposes of bond issuance, 4 of the 5 members shall vote and approve the resolution for the bond issue, one of whom shall be the Chief Financial Officer of the District.

(i) Subject to the availability of appropriations for compensation purposes, each member of the Board shall be entitled to receive the hourly equivalent of the annual rate of pay for the highest step of a grade DS-15 authorized pursuant to Chapter 6 of Title 1, for each hour that the member is engaged in the actual performance of duties vested in the Board not to exceed \$8000 per year, except that a member of the Board who is a full-time officer or employee of the District of Columbia or the federal government shall not be entitled to receive pay under this subsection for performance of duties vested in the Board during the employee's regularly scheduled working hours. Members may be reimbursed for actual expenses. (Aug. 23, 1994, D.C. Law 10-153, § 5, 41 DCR 4652.)

Section references. — This section is referred to in § 40-852.

Legislative history of Law 10-153. — See note to § 40-841.

§ 40-845. Oaths; financial disclosure statement.

Before entering upon the discharge of the duties of office, each member of the Board shall take an oath that he or she will faithfully execute the duties of office according to the laws of the District. Each member shall also take and subscribe to an oath or affirmation that the member has no pecuniary interest, voluntarily or involuntarily, directly or indirectly, in any firm, partnership, association, or corporation engaged in any activity related to a parking facility in the District. Each member shall file annually a financial disclosure statement pursuant to District laws pertaining to the disclosure of financial interests. (Aug. 23, 1994, D.C. Law 10-153, § 6, 41 DCR 4652.)

Legislative history of Law 10-153. — See note to § 40-841.

§ 40-846. Executive Director.

(a) The Board shall appoint an Executive Director who shall be the chief administrative officer of the Authority. The Executive Director shall not be a member of the Board and shall serve at the pleasure of the Board.

(b) In addition to any other duties set forth in this chapter, the Executive Director shall:

(1) Supervise and manage all business affairs and operation and management of properties of the Authority;

(2) Sign and execute all authorized bonds, contracts, and other obligations in the name of the Authority;

(3) Perform all administrative duties as may be required by the Authority; and

(4) Perform all other duties as the Authority may require to carry out the provisions of this chapter. (Aug. 23, 1994, D.C. Law 10-153, § 7, 41 DCR 4652.)

Legislative history of Law 10-153. — See note to § 40-841.

§ 40-847. General powers of the Authority.

The powers of the Authority shall include the following:

- (1) To have perpetual existence as a corporation pursuant to the laws of the District pertaining to corporations;
- (2) To appoint, by majority vote of the Board an Executive Director, General Counsel, and other officers and employees as the Authority may deem necessary;
- (3) To assess the parking needs of the District and encourage the establishment of parking districts;
- (4) To adopt bylaws for the management and regulation of its affairs;
- (5) To sue and be sued;
- (6) To form or join partnerships or joint ventures;
- (7) To enter into leases and subleases, either as lessor or lessee;
- (8) To grant privileges, permits, and concessions and enter into contracts with any individual, partnership, corporation, federal or state agency, or authority;
- (9) To fix, charge, and collect tolls, rates, rentals, and other charges for the use of the facilities of, or for the services rendered by, the Authority or public parking projects of the Authority;
- (10) To issue tickets for parking violations on property under the control or operation of the Authority;
- (11) To acquire real or personal property or interests in such property by means of purchase, lease, sublease, grant, deed, transfer, or other means of conveyance including but not limited to acquisition of property pursuant to § 40-848, provided that the Authority shall not have the power to acquire property by eminent domain;
- (12) To undertake any public parking project, acquisition, construction, or any other acts necessary to carry out the purposes of the Authority;
- (13) To convey, sell, transfer, lease, or exchange any land, buildings or facilities held by the Authority and deemed by the Authority to be in furtherance of the purposes of the Authority; and
- (14) To issue or incur debt. (Aug. 23, 1994, D.C. Law 10-153, § 8, 41 DCR 4652.)

Legislative history of Law 10-153. — See note to § 40-841.

§ 40-848. Acquisition and use of property.

- (a) All property conveyed to the Authority shall be conveyed in the name of the Authority.
- (b) The purpose for which property is leased and for which the privileges, permits, and concessions are granted may not be inconsistent with the use of the property for the purposes authorized by § 40-843. Any lease or contract executed by the Authority shall contain a clause stating specifically the

purpose for which the property is leased, or for which the permit, privilege, or concession is granted. (Aug. 23, 1994, D.C. Law 10-153, § 9, 41 DCR 4652.)

Section references. — This section is referred to in § 40-847.

Legislative history of Law 10-153. — See note to § 40-841.

§ 40-849. Transfer of property interest between the District and the Authority.

(a) After the establishment of a parking district by the Council pursuant to § 40-851, the Authority may request that the Mayor transfer District-owned property to the Authority. The Mayor, pursuant to Chapter 4 of Title 9, may sell, lease, grant, convey, acquire, or otherwise transfer to the Authority any real property owned by the District to fulfill the purposes set forth in § 40-843.

(b) After the establishment of a parking district by the Council pursuant to § 40-851, the Authority may request that the Mayor purchase, lease, sublease, or acquire real property for the Authority to control or operate as a parking facility. The Mayor, pursuant to § 1-336, may purchase, lease, sublease, or otherwise acquire for the Authority real property necessary for a public parking facility.

(c) The Mayor, pursuant to § 1-336, may purchase, lease, or sublease from the Authority or otherwise enter into agreements with the Authority to acquire property rights in any public parking facility acquired by the Authority.

(d) The Mayor may enter into contracts with the Authority, including long-term contracts, for the management, operation, maintenance, and repair of any public parking garage facility owned or leased by the District or for which the District is otherwise responsible.

(e) The Mayor shall have the right to reacquire any property obtained by the Authority from the District whenever the Authority determines that the property is no longer needed for fulfillment of the purposes for which it was acquired. (Aug. 23, 1994, D.C. Law 10-153, § 10, 41 DCR 4652.)

Legislative history of Law 10-153. — See note to § 40-841.

§ 40-850. Parking System Fund.

(a) There is established a special fund to be known as the Parking System Fund (“Fund”).

(b) The Authority shall administer the Fund.

(c) The monies deposited into the Fund shall not be a part of, nor lapse into, the General Fund of the District.

(d) Monies in the Fund shall derive from the following sources:

(1) An administrative fee to be determined by the Authority and collected from each parking district which is based upon the administrative expenses associated with the specific parking district;

(2) A system fee paid by each parking district to the Authority which is based on a percentage of the outstanding debt or a percentage of the total costs of operation or maintenance associated with the specific parking district;

(3) Proceeds from the sale of bonds issued by the Authority;
 (4) Interest earnings;
 (5) Monies made available by the District or other governmental entities;
 (6) Parking fees collected by the Authority from the parking districts;
 (7) Ad valorem taxes collected on behalf of the Authority; and
 (8) Federal grants, private monies, or other sources of monies for parking facilities.

(e) The Fund shall be used for the following purposes:

(1) To collect proceeds of operation from each parking district;
 (2) To pay the principal, interest, redemption premiums, costs, fees, and penalties for borrowings of the Authority either when due or in anticipation of a shortfall in revenue in any funding source identified or pledged to any parking district;
 (3) To make inter-fund loans to any 1 or more of the parking districts established pursuant to § 40-851;
 (4) To fund capital projects of the Authority including costs of acquiring property, developing, constructing, renovating, altering, maintaining, improving, repairing, or expanding any public parking facility; and
 (5) To pay the administrative costs of the parking districts.

(f) After the purposes described in subsection (e) of this section have been satisfied, funds may be held in a general purpose account as working capital repair and renovation reserve funds, or retained earnings.

(g) The Fund shall maintain separate accounts for each parking district to account fully for:

(1) Cash receipts and disbursements;
 (2) Loans to and from other parking districts in the parking system fund;
 (3) Revenue by source of revenue;
 (4) Expenses and expenditures by line item and purpose; and
 (5) Revenue and bond proceeds.

(h) Monies in each separate parking district account shall derive from the following sources:

(1) Any monies made available by the District or other governmental entity for specific application within a parking district;
 (2) All parking fees collected by the Authority within a parking district;
 (3) Ad valorem taxes collected on behalf of the Authority within a parking district; and
 (4) All proceeds from the sale of bonds issued for public parking facilities within a parking district.

(i) Except as provided in § 40-851(h), monies in each separate parking district account shall be used for the following purposes:

(1) To pay the principal, interest, redemption premiums, and other costs, fees, or penalties associated with debt service on facilities within a parking district;
 (2) To establish and maintain debt service reserve funds;
 (3) To pay the costs associated with the development of, land acquisition for, and construction of capital improvements to existing and future public parking facilities located within a parking district;

(4) To pay the costs of repairing and renovating public parking facilities within a parking district;

(5) To pay the costs of administering, operating, and maintaining facilities located within a parking district; and

(6) To pay the administrative and system fees as determined by the Authority to the Fund.

(j) Annual financial statements for the Fund shall be prepared and submitted to the Mayor and the Council. (Aug. 23, 1994, D.C. Law 10-153, § 11, 41 DCR 4652.)

Section references. — This section is referred to in § 40-852.

Legislative history of Law 10-153. — See note to § 40-841.

§ 40-851. Parking districts.

(a)(1) Parking districts shall be geographical areas definable by specific metes and bounds and may be located in any area permitted in accordance with the zoning regulations of the District.

(2) Parking facilities may be established in any section or portion of the District except that no parking facilities shall be established upon any property zoned residential without the approval of the Zoning Commission of the District. The Zoning Commission may grant such approval only after public notice and hearing in accordance with § 5-415, and a finding that the location of a parking facility in the area is to the benefit of the residents.

(b) The establishment of a parking district shall be initiated with a petition signed by the owners of real property that represents 50% or more of the combined assessed value of all Class 3, Class 4, and Class 5 real property, as those classes of real property are established pursuant to § 47-813, located within a proposed parking district. Upon receipt of a valid petition, the Authority shall assess the parking needs within the proposed parking district and recommend to the Mayor the establishment of a parking district if the Authority determines that the establishment of a parking district is warranted.

(c) A recommendation to the Mayor for the establishment of a parking district shall describe the metes and bounds of the proposed parking district and shall also contain the following information:

(1) An assessment of current facilities for parking within the proposed parking district and an assessment of current and future parking needs for that area;

(2) A proposal for the establishment of parking facilities within the proposed parking district including the specific structures to be erected and a time frame for completion of such facilities; and

(3) A statement of finding that the establishment of the proposed parking facility or facilities within the proposed parking district is not in violation of existing zoning regulations of the District.

(d) Simultaneous with submittal of the recommendation to the Mayor for the establishment of a parking district, the Authority shall submit a financial plan for funding the public parking facilities within the proposed parking district which may include the following:

- (1) Specific user charges proposed;
 - (2) An ad valorem real property tax rate to be imposed on Class 3, Class 4, and Class 5 real property within the parking district; and
 - (3) Any other elements of the financial plan which would generate revenues sufficient to meet debt service, administrative fees and any other expenses relating to bonds sold to finance the proposed parking facilities within the parking district and also provide for operating and maintenance costs.
- (e) If the Mayor approves the recommendation by the Authority, the Mayor shall transmit proposed legislation to the Council for the creation of the proposed parking district within 60 days from the date the Mayor receives the recommendation from the Authority.
- (f) After the Council receives the proposed legislation for establishment of the parking district from the Mayor, the Council may establish by act the parking district.
- (g) The Council is authorized in each fiscal year following the establishment of a parking district to levy and cause to be collected special real property taxes in the nature of ad valorem taxes from property owners in each parking district.
- (h) The special tax levied on the property owners in the parking district and other monies collected by the parking district shall be used to pay the following for the specific parking district for which the tax is levied:
- (1) The system fee;
 - (2) The administrative fee; and
 - (3) The repayment of debt service, credit enhancements, and administrative fees.
- (i) Property owners who fail to pay the special tax authorized by subsection (g) of this section shall be subject to interest and penalties for nonpayment of taxes pursuant to § 47-1813.4.
- (j) On a date to be set by the Mayor, the Authority shall submit to the Mayor a budget, which shall be included in the annual or supplemental budget transmitted by the Mayor to the Council pursuant to § 47-301, covering all anticipated revenue, transfers, expenses, and capital outlays of the Authority. (Aug. 23, 1994, D.C. Law 10-153, § 12, 41 DCR 4652; Apr. 18, 1996, D.C. Law 11-110, § 45(a), 43 DCR 530.)

Section references. — This section is referred to in §§ 40-849 and 40-850.

Effect of amendments. — D.C. Law 11-110 substituted “Class 3, Class 4, and Class 5” for “Class 3 and Class 4” in the first sentence of (b).

Legislative history of Law 10-153. — See note to § 40-841.

Legislative history of Law 11-110. — Law 11-110, the “Technical Amendments Act of

1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 40-852. Revenue bonds.

- (a) The Council delegates to the Authority the power of the Council, as provided in § 47-334, to issue revenue bonds in such principal amounts as, in

the opinion of the Authority, shall be necessary to finance the cost of acquiring property and of establishing, constructing, erecting, altering, expanding, enlarging, improving, and equipping buildings, structures, and other facilities in order to carry out its purposes under this chapter.

(b) The Authority may issue bonds to refund, advance refund or refinance any of its bonds then outstanding, including the payment of any redemption premium and any interest accrued or to accrue to the earliest date or any subsequent date of redemption, purchase, or maturity of the bonds.

(c) Notwithstanding any other provision of law, the Authority shall have the power and is authorized to pledge tax revenue derived from ad valorem taxes imposed on behalf of the Authority, to the payment of the principal of, interest, or redemption premium on, any bonds issued by the Authority.

(1) The Mayor shall act as an agent for the Authority for purposes of collection and disbursement of any revenues from taxes imposed on behalf of the Authority;

(2) The Mayor shall deposit any tax revenues into the parking system fund pursuant to § 40-850; and

(3) Tax revenues collected on behalf of the Authority shall not be commingled with any funds of the District.

(d) Bond issuance may be authorized by a resolution of the Authority pursuant to § 40-844(h). The resolution shall provide that the public parking project is to be acquired pursuant to this chapter and applicable provisions of District law.

(e) The Authority may stipulate by resolution the terms for sale of its bonds in accordance with this chapter, including the following:

(1) The date a bond bears;

(2) The date a bond matures; provided, that notes shall not mature later than 10 years from the date of original issuance and revenue bonds shall not mature later than 50 years from the date of original issuance;

(3) Whether bonds are issued as serial bonds, as term bonds, or as a combination of the two;

(4) The denomination;

(5) The interest rate or rates, or variable rate or rates changing from time to time in accordance with a base or formula;

(6) The registration privileges;

(7) The medium and method for payment; and

(8) The terms of redemption.

(f)(1) If the resolution authorizing the sale of bonds contains any of the provisions listed in paragraph (2) of this subsection, the provisions must also be part of the contract with holders of the bonds.

(2) The provisions in the resolution may include the following:

(A) The ad valorem tax sufficient to cover the debt service on the bonds;

(B) The custody, security, expenditure, or application of proceeds of the sale of bonds of the Authority (hereinafter "proceeds"), a pledge of the proceeds to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of bonds;

(C) A pledge of revenue from parking projects of the Authority to secure payment and the rank or priority of the pledge, subject to preexisting agreements with holders of bonds;

(D) A pledge of assets of the Authority, including mortgages and obligations securing mortgages, to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of bonds;

(E) Use of gross income from mortgages owned by the Authority and payment on principal of mortgages owned by the Authority;

(F) Use of reserves or sinking funds;

(G) Use of proceeds from the sale of bonds and a pledge of proceeds to secure payment;

(H) Limitations on issuance of additional bonds, including terms of issuance and security, and the refunding, advance refunding, or refinancing of outstanding or other bonds;

(I) Procedures for amendment or abrogation of a contract with holders of bonds, the amount of bonds, the holders of which must consent to the amendment, and the manner in which consent may be given;

(J) Vesting in a trustee property, power, and duties, which may include the power and duties of a trustee appointed by holders of bonds;

(K) Limitation or abrogation of the right of holders of bonds to appoint a trustee;

(L) Defining the nature of default in the obligations of the Authority to the holders of bonds and providing rights and remedies of holders in the event of default, including the right to appointment of a receiver, in accordance with this chapter and the laws of the District;

(M) Any other provisions of like or different character which affect the security of holders of bonds; and

(N) Providing for guarantees, pledges of property, letters of credit, or other security, or insurance for the benefit of bondholders.

(g)(1) A pledge by the Authority of revenues and receipts, derived from ad valorem taxes and parking operations, collected by or on behalf of the Authority, as security for an issue of bonds shall be valid and binding from the time such pledge is made.

(2) The revenues and receipts pledged shall immediately be subject to the lien of the pledge without physical delivery or further act, and the lien of any pledge shall be valid and binding against any person having any claim of any kind in tort, contract, or otherwise against the Authority, irrespective of whether the person has notice.

(3) Notwithstanding any other law, the filing or recording of any resolution, trust, agreement, management agreement, financing statement, continuation statement, or other instrument adopted or entered into by the Authority in any public record other than the records of the Authority, is required for purposes of this section in order to perfect the lien against third persons.

(h) Bonds which are being paid or retired by issuance, sale, or delivery of bond and bonds for which sufficient funds have been deposited with the paying agent or trustee to provide for payment of principal and interest thereon, and any redemption premium, as provided in the authorizing resolution, shall not be considered outstanding for the purposes of this subsection.

(i) The signature of any officer of the Authority which appears on a bond shall remain valid if that person ceases to hold that office.

(j) The Authority may secure bonds by a trust agreement between the Authority and a corporate trustee having the powers of a trust company within the District.

(k) A trust agreement of the Authority may contain provisions for protecting and enforcing the rights and remedies of holders of bonds in accordance with the provisions of the resolution authorizing the sale of bonds.

(l) The Authority may treat expenses incurred in carrying out a trust agreement as operating expenses.

(m) Subject to preexisting agreements with the holders of bonds, the Authority may purchase its own bonds which may then be cancelled. The price of the bonds cannot exceed the following limits:

(1) If the bonds are redeemable, the price cannot exceed the redemption price then applicable plus accrued interest to the next interest payment; or

(2) If the bonds are not redeemable, the price cannot exceed the redemption price applicable on the first date after the purchase upon which the bonds become subject to redemption plus accrued interest to that date.

(n) No member of the Board, Executive Director or employee of the Authority shall be personally liable by reason of the issuance of bonds.

(o) The Authority may enter into agreements with agents, banks, insurers, or others for the purpose of enhancing the marketability of or security for its bonds.

(p) Authority bonds are legal investments in which public officers and public bodies of the District, insurance companies and associations and other persons carrying on an insurance business, banks, bankers, banking institutions, including savings and loan associations, investment companies and other persons carrying on a banking business, administrators, guardians, executors, trustees and other fiduciaries, and other persons authorized to invest in bonds or in other obligations of the District, may legally invest funds, including capital, in their control. The bonds are also securities which legally may be deposited with and received by public officers and public bodies of the District or any agency of the District for any purpose for which the deposit of bonds or other obligations of the District is authorized by law.

(q) The bonds of the Authority shall not constitute an indebtedness of the District. The bonds of the Authority are not general obligations of the District and are not secured by a pledge of the full faith and credit of the District and the holders of Authority bonds may not require the levy or imposition by the District of any taxes, or except as provided in this chapter, the application of other District revenues or funds to the payment of Authority bonds. All bonds issued by the Authority shall contain on their faces a statement setting forth the above qualifications of this subsection.

(r) The District shall pledge to and agree with the holders of Authority bonds issued pursuant to this chapter that the District shall not limit or alter the rights and powers vested in the Authority by this chapter so as to impair the terms of any contract made by the Authority with such holders or in any way impair the rights and remedies of such holders until such bonds, together

with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, are fully met and discharged. In addition, the District shall pledge to and agree with the holders of Authority bonds issued pursuant to this chapter that the District shall not limit or alter the basis on which District funds are to be allocated, deposited, and paid to the Authority as provided in this chapter, or the use of such funds, so as to impair the terms of any such contract. The Authority is authorized to include these pledges and agreements of the District in any contract with the holders of bonds issued pursuant to this section.

(s) Regardless of their form or character, Authority bonds are negotiable instruments for all purposes of subtitle I of Title 28, subject only to the provisions of the bonds for registration.

(t) The Authority may sell its bonds at public or private sale and may determine the price for sale.

(u) The issuance of bonds by the Authority as contemplated in this section and the adoption of resolutions authorizing such bonds, and other obligations shall be done in compliance with the requirements of this section, but shall not be subject to Chapter 15 of Title 1, and, except as otherwise provided in this section, shall not be required to comply with the requirements of any legislation passed by the Council. No notice (except as provided in this section), proceeding, consent, or approval shall be required for the issuance of any bond of the Authority or the execution of any instrument relating thereto or to the security therefor, except as provided in this section or in the bylaws promulgated by the Authority. Notice of the adoption of a bond resolution shall be given to the Mayor and the Council after the adoption of such resolution. (Aug. 23, 1994, D.C. Law 10-153, § 13, 41 DCR 4652; Apr. 18, 1996, D.C. Law 11-110, § 45(b), 43 DCR 530.)

Effect of amendments. — D.C. Law 11-110 validated a previously made substitution of “Executive Director” for “director” in (n).

Legislative history of Law 10-153. — See note to § 40-841.

Legislative history of Law 11-110. — See note to § 40-851.

§ 40-853. Tax exemption.

(a) Bonds issued by the Authority and the interest thereon are exempt from District taxation except estate, inheritance, and gift taxes.

(b) Real and personal property owned and used for exempt purposes by the Authority shall be exempt from District taxation. (Aug. 23, 1994, D.C. Law 10-153, § 14, 41 DCR 4652.)

Legislative history of Law 10-153. — See note to § 40-841.

§ 40-854. Conflicting relationships or interests.

(a) No member of the Board or employees of the Authority shall be employed by, be an officer or director of, or have any ownership interest in any

corporation or entity which is a party to any agreement with the Authority. No monies of the Authority shall be deposited in any financial institution in which a Board member or employee of the Authority is an officer, director, or holder of a substantial proprietary interest. No real estate to which a Board member or employee of the Authority holds legal title or in which such person has any beneficial interest, including any interest in a land trust, shall be purchased by the Authority. All Board members and employees of the Authority shall file annually with the Authority a record of all real estate in the District to which such person holds legal title or in which such person has any beneficial interest, including any interest in a land trust. In the event it is later disclosed that the Authority has purchased real estate in which a Board member or employee had an interest, such purchase shall be void by the Authority and the Board member or employee involved shall be disqualified from membership in or employment by the Authority.

(b) No member of the Board or employee of the Authority shall in his or her own name or in the name of a nominee, be an officer, director, or hold an ownership interest in any association, trust, corporation, partnership, or other entity which is in its own name or the name of a nominee, a party to a contract or agreement upon which the Board member, officer, agent, or employee may be called to act or vote. Any contract or agreement made in violation of this subsection shall be void and shall give rise to no action against the Authority. (Aug. 23, 1994, D.C. Law 10-153, § 15, 41 DCR 4652.)

Legislative history of Law 10-153. — See note to § 40-841.

CHAPTER 9. PUBLIC-OWNED VEHICLES.

Sec.

40-901. Distinctive markings.

40-902. Official use.

§ 40-901. Distinctive markings.

All motor vehicles and all horse-drawn carriages and buggies owned by the District of Columbia shall be of uniform color and have painted conspicuously thereon, in letters not less than 3 inches high and markedly contrasting in color with the body color of the vehicle, the words, "District of Columbia." (Mar. 3, 1917, 39 Stat. 1010, ch. 160; 1973 Ed., § 40-501.)

Cross references. — As to licensing and registration of publicly owned vehicles, see § 40-102.

As to inspection and exemption from fees, see § 40-204.

As to operators' permits for operation of publicly owned vehicles, see § 40-301.

§ 40-902. Official use.

All passenger motor vehicles and watercraft owned by the District of Columbia shall be operated and utilized in conformity with 31 U.S.C. §§ 1343 (a) to (d), 1344, and 1349(b), and shall be under the direction and control of the Mayor of the District of Columbia. The Mayor is authorized to alter or change the assignment or direct the alteration or interchangeable use of any passenger motor vehicles or watercraft by officers and employees of the District of Columbia except as otherwise provided in such sections. Limitations on the official use of passenger motor vehicles, as set out in such sections, shall not apply to the Mayor or, with the approval of the Mayor, to officers and employees of the District government the character of whose duties make such transportation necessary. (1973 Ed., § 40-501a; Oct. 26, 1973, 87 Stat. 504, Pub. L. 93-140, § 2.)

References in text. — "31 U.S.C. §§ 1343(a) to (d), 1344, and 1349(b)", referred to in the first sentence of this section, was substituted for "§ 5 of the Act of July 16, 1914, as amended by § 16 of the Act of August 2, 1946 (31 U.S.C. 638a)", "such sections", referred to at the end of the second sentence of this section, was substituted for "such Act", and "such sections", referred to in the last sentence of this

section, was substituted for "§ 5 of such Act" on authority of § 4(b) of the Act of September 13, 1982, Pub. L. 97-258.

Restrictions on use of appropriated funds to compensate chauffeurs. — See Act of October 1, 1976, 90 Stat. 1494, Pub. L. 94-446, § 111; Act of October 30, 1979, 93 Stat. 713, Pub. L. 96-93, § 210.

CHAPTER 10. LIENS ON MOTOR VEHICLES OR TRAILERS.

Sec.	Sec.
40-1001. Definitions.	40-1009. Entry of lien or assignment where certificate is not available; Recorder to obtain certificate.
40-1002. Lien to appear on certificate of title; effect of other liens.	40-1010. Satisfaction of liens — Possession of certificate.
40-1003. Entry of lien — Priority.	40-1011. Same — Duties of Recorder; procedure when certificate lost.
40-1004. Same — Form and requirements of instrument creating lien; when lien not entered.	40-1012. Recordation fee.
40-1005. Liens to be kept by Recorder in Director's office.	40-1013. Fee for releasing liens.
40-1006. Liens shown by application for certificate; entry of lien; collection of fees; absence of liens to be shown; certificate to holder of first lien.	40-1014. Place and method of recordation.
40-1007. Entry of lien on previously issued certificate.	40-1015. False statements as to liens; violations of law chapter.
40-1008. Assignment of lien; form and requirement of assignment; entry and recording of assignment; certificate to holder of first lien.	40-1016. Appropriation.
	40-1017. Terminal rental adjustment clauses: vehicle leases that are not sales or security interests.

§ 40-1001. Definitions.

(a) "Person" shall include one or more individuals, firms or unincorporated associations, or corporations.

(b) "Director" shall mean the Director of Vehicles and Traffic of the District of Columbia, including assistants or agents duly designated by the Mayor of the District of Columbia.

(c) "Recorder" shall mean the Recorder of Deeds of the District of Columbia, including assistants or agents duly designated by the Recorder.

(d) "Certificate" shall mean a certificate of title for a motor vehicle or trailer issued by the Director.

(e) "Owner" shall mean the person to whom such certificate is issued by the Director.

(f) "Lien" shall mean any right or interest in or to, any security interest as defined in § 28:1-201 of the District of Columbia Code in, or lien or encumbrance upon any motor vehicle or trailer, or the equipment or accessories affixed or sold to be affixed thereto, in favor of a person other than the owner, except:

(1) A sale of such motor vehicle or trailer accompanied by delivery of possession and on execution of the assignment on the back of the certificate covering it; or

(2) Any possessory lien now or hereafter provided by law or any lien acquired in any judicial proceeding.

(g) "Instrument" shall mean any security agreement, as defined in § 28:9-105 (l) of the District of Columbia Code, creating such lien.

(h) "Lien information" shall mean the amount, kind, date of lien, name and address of holder or secured party as defined in § 28:9-105(m) of the District of Columbia Code, and Recorder's record number, if any.

(i) "Motor vehicle" shall mean all vehicles propelled by internal-combustion engines, electricity, or steam. The term "motor vehicle" shall not include

traction engines, road rollers, vehicles propelled only upon rails or tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour. (July 2, 1940, 54 Stat. 736, ch. 527, § 1; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 6(a); 1973 Ed., § 40-701; Mar. 15, 1985, D.C. Law 5-176, § 9, 32 DCR 748.)

Cross references. — As to applicability of this chapter to secured transactions, see §§ 28:9-203 and 28:9-302.

Section references. — This section is referred to in § 28:9-302.

Legislative history of Law 5-176. — See note to § 40-208.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Department of Vehicles and Traffic abolished. — See note to § 40-703.

§ 40-1002. Lien to appear on certificate of title; effect of other liens.

During the time a certificate is outstanding for any motor vehicle or trailer, no lien against such motor vehicle or trailer or any equipment or accessories affixed or sold to be affixed thereto shall be valid except as between the parties and as to other persons having actual notice, unless and until entered on such certificate as hereinafter set forth; provided, that the foregoing shall not apply to a lien or liens in existence on January 1, 1940, against a motor vehicle or trailer for which a certificate is outstanding on January 1, 1941, or any equipment or accessories affixed thereto. The filing provisions of Article 9 of Subtitle I of Title 28 of the District of Columbia Code do not apply to liens recorded as herein provided, and a lien has no greater validity or effect during the time a certificate is outstanding for the motor vehicle or trailer covered thereby by reason of the fact that the lien has been filed in accordance with that article. (July 2, 1940, 54 Stat. 736, ch. 527, § 2; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 6(b); 1973 Ed., § 40-702.)

Liens asserted on automobile. — Where the conditional sales contract of an automobile buyer was assigned to a finance company but the company never received a title certificate because the dealer had financial difficulties, plaintiff-lender who advanced funds to the dealer for purchase of automobiles was estopped from asserting a lien against a buyer who had no actual knowledge of plaintiff's

recorded chattel mortgage lien, and the buyer, not being in default, was entitled to use and enjoyment of automobile, and finance company was entitled to have its lien recorded on certificate of title. *Smith, Kirkpatrick & Co. v. Continental Autos, Ltd.*, 184 F. Supp. 764 (D.D.C. 1960).

Cited in *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979).

§ 40-1003. Entry of lien — Priority.

In the absence of agreement of all parties affected and in the absence of circumstances estopping a lienholder from insisting upon such rights, lien shall be entered on the certificate by the Recorder and shall have priority among themselves in the following order:

(1) If the motor vehicle or trailer has been previously titled or registered in this or some other jurisdiction, unsatisfied liens shown by the previous certificate, title, registry, or proof of ownership shall be entered in the order in which they appear on such previous certificate, title, registry, or proof of ownership.

(2) Liens for which instruments are presented with the application for the certificate.

(3) Liens, where the instruments are presented for recording, together with the certificate, irrespective of the fact that 1 or more instruments not entered on the certificate may have been previously presented for recording without such certificate.

(4) As between 2 or more instruments presented for recording without the certificate, the one first presented for recording shall have priority. (July 2, 1940, 54 Stat. 737, ch. 527, § 3; 1973 Ed., § 40-703.)

Section references. — This section is referred to in § 40-1009.

§ 40-1004. Same — Form and requirements of instrument creating lien; when lien not entered.

(a) An instrument:

(1) Shall be in writing;

(2) Shall show the name and address of the holder, the trade name and engine, serial or identification number of the motor vehicle or the trade name and serial number, if any, of the trailer; and

(3) Shall be signed by the parties.

(b) A lien shall not be entered upon a certificate unless:

(1) The motor vehicle or trailer has been previously titled or registered in this or some other jurisdiction and the lien is shown upon such previous certificate, title, registry, or proof of ownership;

(2) Such an instrument is presented for recording pursuant to the provisions of this chapter; or

(3) The lien is shown on the application for a certificate, and was created prior to January 1, 1941, or was created while the motor vehicle or trailer was titled or registered in some other jurisdiction. (July 2, 1940, 54 Stat. 737, ch. 527, § 4; June 4, 1952, 66 Stat. 100, ch. 365, § 1; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 7; 1973 Ed., § 40-704.)

§ 40-1005. Liens to be kept by Recorder in Director's office.

The Mayor of the District of Columbia shall assign to the Recorder space in the office of the Director, and the Recorder shall furnish and maintain the necessary furniture, equipment, cards hereinafter mentioned, and other supplies and the required personnel for the purpose of carrying out the provisions of this chapter. (July 2, 1940, 54 Stat. 737, ch. 527, § 5; 1973 Ed., § 40-705.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-1006. Liens shown by application for certificate; entry of lien; collection of fees; absence of liens to be shown; certificate to holder of first lien.

Applications for certificates, in addition to all other matters which may be required by law, shall show whether or not there are any liens against the motor vehicle or trailer or any equipment or accessories affixed thereto and if so, the lien information in the order of its priority, and shall be accompanied by instruments or any other papers necessary to entitle liens to be entered on the certificate. Upon receipt by the Recorder from the Director of an application for a certificate and accompanying documents, if any, or on the application for a duplicate, the Recorder shall compare the statements in the application as to liens with his records and the documents and instruments accompanying the application and if such statements are incorrect or incomplete or if any of the liens shown by the application and not entitled to be entered on the certificate in the same order as they appear on the application the Recorder shall return all of said papers to the Director and advise him of the reasons therefor. If the statements as to liens are full, true, and complete and all liens shown by the application are entitled to be entered on the certificate in the same order as they appear on the application, the Recorder shall stamp on the application the words, "Statements as to liens in accordance with records," a facsimile of his signature, and the date, shall accept all instruments accompanying the application for recording and shall stamp his record number opposite the statement of each lien on the application for certificate. The Recorder shall retain the instruments for his permanent file and collect the fees and charges thereon and return the application and all other papers to the Director, who shall thereupon deliver same to a representative of the Collector of Taxes of the District of Columbia, stationed in the office of the Director. Said representative shall then collect from the applicant or his representative all fees and charges

in connection with the issuance of the certificate and shall return said application and papers to the Director. The Director shall thereupon issue the certificate and where liens are shown on such an application shall stamp upon a card, the size of which shall be fixed by the Director, the information stamped by the Director on the face of such certificate and shall deliver such certificate, its application card, if any, and the identification-tag application to the Recorder. If the application for title shows no liens, the Recorder shall stamp on the certificate and on the reverse side of that portion of the application for identification tags known as "Collector's Coupon" the words "No Liens Shown By Records" and the date. If the application shows liens, the Recorder shall stamp aforesaid "Collector's Coupon" with the words "Lien Recorded" and shall enter the lien information on certificate and on the said card. The aforesaid stamping and entering shall be made on the face of the certificate in the space provided for the use of the Recorder. The Recorder shall then deliver both applications and the papers attached and the certificate to the Director, who shall retain the application and the papers attached and shall deliver or mail the certificate to the record holder of the first lien shown thereon or his representative; or if there are no liens, then to the owner or his representative. (July 2, 1940, 54 Stat. 737, ch. 527, § 6; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 1; Dec. 4, 1967, 81 Stat. 532, Pub. L. 90-172, § 2; 1973 Ed., § 40-706.)

Section references. — This section is referred to in §§ 40-1007 and 40-1011.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 26, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office

of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Division of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

§ 40-1007. Entry of lien on previously issued certificate.

When it is desired to have a lien entered on a certificate theretofore issued, the instrument and the certificate shall be presented to the Recorder in the office of the Director and upon the payment of the necessary fees to the representative of the Recorder of Deeds of the District of Columbia in the office of the Director the Recorder shall accept the instruments for recording and unless he has a card covering said motor vehicle or trailer the Director shall

stamp a card in the manner set forth in § 40-1006. The Recorder shall enter the lien information on the certificate in the space hereinbefore mentioned and on said card and shall deliver or mail the certificate to the record holder of the first unsatisfied lien shown thereon or his representative. (July 2, 1940, 54 Stat. 738, ch. 527, § 7; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 2; 1973 Ed., § 40-707.)

§ 40-1008. Assignment of lien; form and requirement of assignment; entry and recording of assignment; certificate to holder of first lien.

The rights of the holder of an unsatisfied lien shown on a certificate may be assigned by an assignment in writing, which shall show the name and address of the assignee, the trade name and engine, serial or identification number of the motor vehicle, or the trade name and serial number, if any, of the trailer, and the Recorder's record number of the instrument, or if none, a brief description sufficient to identify the lien shall be signed by the holder of the lien. Upon presentation of an assignment and a certificate and the payment of the prescribed fee to the representative of the Recorder of Deeds of the District of Columbia in the office of the Director, the Recorder shall enter upon the face of the certificate and upon the card hereinbefore described the Recorder's record number of the lien which is being assigned, or, if no such instrument is on file, a brief description sufficient to identify the lien, the date of the assignment and the words, "Assigned to," and the name and address of the assignee, and the date. The assignment shall be attached to the instrument if the instrument has been filed with the Recorder, and, if not, the assignment shall be given a Recorder's record number and filed by the Recorder and such number shall be entered on the certificate and on the said card opposite the entry of the information relative to the assignment. The certificate shall be delivered to the record holder of the first unsatisfied lien shown thereon, or his representative. (July 2, 1940, 54 Stat. 738, ch. 527, § 8; June 4, 1952, 66 Stat. 100, ch. 365, § 2; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 3; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 8; 1973 Ed., § 40-708.)

§ 40-1009. Entry of lien or assignment where certificate is not available; Recorder to obtain certificate.

Whenever it is desired to enter a lien or an assignment upon a certificate and such certificate is not available, upon delivery to the Recorder of the instrument or assignment the Recorder shall demand that the person possessing the certificate surrender it for the purpose of entering thereon the lien or the assignment and upon surrender of the certificate the Recorder shall perform the same acts as in cases where the certificate was presented with the instrument. This section shall not be deemed to affect the priority given under § 40-1003 (3) to a lien where the instrument is presented together with the certificate. (July 2, 1940, 54 Stat. 739, ch. 527, § 9; 1973 Ed., § 40-709.)

§ 40-1010. Satisfaction of liens — Possession of certificate.

The record holder of the first unsatisfied lien shown upon the certificate shall be entitled to the possession of the certificate and upon satisfaction of his lien he shall, within 72 hours, place upon the face of the certificate the Recorder's record number of the lien, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the word "satisfied," or its equivalent, and his signature, swear to it before a notary public, and forward or deliver the certificate to the holder of the lien next in priority, or, if none, to the owner or to the person designated in writing by the owner. Upon the satisfaction of any lien other than the first unsatisfied lien shown on the certificate, the record holder of the lien so satisfied shall, within 72 hours, make similar entries upon the face of the certificate, and it shall be the duty of the person in possession of the certificate, upon demand, to permit such holder to make said entries. Any person in possession of a certificate shall, upon demand of the Recorder, surrender it to the recorder within 72 hours for the purpose of entering the lien or assignment thereon. (July 2, 1940, 54 Stat. 739, ch. 527, § 10; 1973 Ed., § 40-710.)

Section references. — This section is referred to in § 40-1011.

§ 40-1011. Same — Duties of Recorder; procedure when certificate lost.

The Recorder, upon receipt of a certificate whereon a lien is marked "Satisfied" as set forth in § 40-1010, shall enter on the face of the certificate and on the card described in § 40-1006, and on the instrument, if any, filed in the Recorder's office as hereinafter provided, his said record number, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the word "released," a facsimile of his signature and the date. Where for any reason a lien-holder upon satisfaction of his lien has failed to mark the certificate as herein provided and the lien-holder cannot be located, or where the certificate after being so marked has been lost or destroyed and a duplicate certificate issued, the Recorder upon receipt of evidence satisfactory to him that the lien has been satisfied shall release it upon the certificate or duplicate certificate, the aforesaid cards and instrument, if any, as above set forth. Whenever any lien has been released as provided in this section for a period of more than 3 years, the Recorder of Deeds may destroy the instrument which created such lien and the index card upon which the lien information was entered: Provided, that no other unsatisfied lien is shown on any such index card. (July 2, 1940, 54 Stat. 739, ch. 527, § 11; June 5, 1952, 66 Stat. 126, ch. 370, § 4; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 4; 1973 Ed., § 40-711.)

§ 40-1012. Recordation fee.

The fee for recording liens or assignments of liens upon a certificate shall be the sum of \$15 for each lien or assignment of lien on each motor vehicle or trailer contained in the instrument, which fee shall include the charge for

recording the release of such lien. (July 2, 1940, 54 Stat. 739, ch. 527, § 12; Dec. 15, 1945, 59 Stat. 610, ch. 578; June 19, 1948, 62 Stat. 493, ch. 522, § 1; 1973 Ed., § 40-712; Aug. 17, 1991, D.C. Law 9-30, § 6, 38 DCR 4215.)

Section references. — This section is referred to in §§ 40-1013 and 45-915.

Legislative history of Law 9-19. — Law 9-19, the “Omnibus Budget Support Temporary Act of 1991,” was introduced in Council and assigned Bill No. 9-205. The Bill was adopted on first and second readings on May 7, 1991, and June 4, 1991, respectively. Signed by the Mayor on June 21, 1991, it was assigned Act No. 9-43 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-30. — Law 9-30, the “District of Columbia Motor Vehicle Services Fees Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-163, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-57 and transmitted to both Houses of Congress for its review.

§ 40-1013. Fee for releasing liens.

Notwithstanding the provisions of § 40-1012, there shall be a fee of \$.50 for recording the release of a lien which is recorded under the provisions of this chapter, prior to June 19, 1948, and no assignment of which is recorded under the provisions of this chapter after June 19, 1948. (June 19, 1948, 62 Stat. 493, ch. 522, § 2; 1973 Ed., § 40-712a.)

Section references. — This section is referred to in § 45-915.

§ 40-1014. Place and method of recordation.

The Recorder shall maintain, in the space assigned to him in the office of the Director, a file wherein he shall file a set of cards hereinbefore described under the trade name and engine, serial or identification number if it covers a motor vehicle, or the trade name and serial number, if any, if it covers a trailer. The Recorder shall file the instruments at his main office. (July 2, 1940, 54 Stat. 739, ch. 527, § 13; June 4, 1952, 66 Stat. 100, ch. 365, § 3; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 5; 1973 Ed., § 40-713.)

§ 40-1015. False statements as to liens; violations of law chapter.

Any person intentionally making a false statement with respect to liens in an application for a certificate, or wilfully violating any of the provisions of this chapter, shall upon conviction be punished by a fine of not more than \$500 or be imprisoned for not more than one year, or both. Prosecutions for violations of this chapter shall be by the Corporation Counsel of the District of Columbia or any of his assistants, in the name of the District of Columbia. (July 2, 1940, 54 Stat. 739, ch. 527, § 14; 1973 Ed., § 40-714.)

Section 40-1006 and this section apply to duplicate as well as original certificates. *Shelton v. United States*, 165 F.2d 241 (D.C. Cir. 1947).

Violations of this section must be prosecuted by Corporation Counsel in the name of the District of Columbia, rather than by the United States Attorney in the name of the

United States under the general perjury statute. *Shelton v. United States*, 165 F.2d 241 (D.C. Cir. 1947).

Separate false statements constituted separate offenses. — One who made 2 false

statements, 1 violating former § 22-2501, and the other violating this section, committed 2 offenses, though both statements are under 1 oath. *Shelton v. United States*, 165 F.2d 241 (D.C. Cir. 1947).

§ 40-1016. Appropriation.

Appropriation is hereby authorized to be made to carry out the provisions of this chapter, and the Mayor of the District of Columbia is authorized to include in his annual estimates provision for all the expenses of the Office of the Director and Recorder incident to such purposes, and for personnel. (July 2, 1940, 54 Stat. 740, ch. 527, § 15; Oct. 28, 1949, 63 Stat. 972, title XI, ch. 782, § 1106 (a); 1973 Ed., § 40-715; Mar. 3, 1979, D.C. Law 2-139, § 3205 (m), 25 DCR 5740.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — See note to § 40-703.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-1017. Terminal rental adjustment clauses: vehicle leases that are not sales or security interests.

In the case of motor vehicles or trailers, notwithstanding any other provisions of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer. (July 2, 1940, ch. 527, § 15a, as added Mar. 17, 1993, D.C. Law 9-205, § 2, 40 DCR 10.)

Legislative history of Law 9-205. — Law 9-205, the “TRAC Vehicle Leasing Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-473, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and

second readings on November 4, 1992, and December 1, 1992, respectively. Signed by the Mayor on December 18, 1992, it was assigned Act No. 9-334 and transmitted to both Houses of Congress for its review. D.C. Law 9-205 became effective on March 17, 1993.

CHAPTER 11. INSTALLMENT SALES OF MOTOR VEHICLES.

Sec.	Sec.
40-1101. Definitions.	40-1104. Delegation of functions; exception.
40-1102. Maximum finance charges; computation; proportionate adjustments; investigation of economic conditions to determine finance charges; regulations; classification of parties; waiver.	40-1105. Council to make regulations; public hearings.
40-1103. Bonding of automobile dealers and applicants; liability insurance; designation of Mayor as agent for service of process; limitation on bonds; action on bonds.	40-1106. False statements.
	40-1107. Penalties.
	40-1108. Prosecutions.
	40-1109. Additional authority granted to Mayor.
	40-1110. Severability.

§ 40-1101. Definitions.

For purposes of this chapter, unless the context requires a different meaning:

(1) "Mayor" means the Mayor of the District of Columbia, or his designated agent.

(2) "District" means the District of Columbia.

(3) "Finance charge" means finance charge as defined under the provisions of the Truth in Lending Act (15 U.S.C. § 1601 et seq.) and the regulations and interpretations thereunder.

(4) "Governmental charges" means the excise tax, personal property tax, inspection fee, registration fee, recording fee, and such other fees charged by any government, or otherwise authorized by law, incident to the transfer of title to a motor vehicle as the District of Columbia Council may by regulation include within such term.

(5) "Instrument of security" means any promissory note, retail installment contract, or other written promise to pay the unpaid balance of the total amount to be paid by a retail buyer of a motor vehicle.

(6) "Motor vehicle" means any automobile, mobile home, motorcycle, truck, truck tractor, trailer, semitrailer, or bus. The term "motor vehicle" shall not include any boat trailer, any vehicle propelled or drawn exclusively by muscular power, any vehicle designed to run only on rails or tracks, and any battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.

(7) "Person" means an individual, firm, partnership, joint-stock company, corporation, association, incorporated society, statutory or common law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, committee, assignee, officer, employee, principal, or agent.

(8) "Principal balance" means the cash sale price of a motor vehicle, including accessories and equipment, plus the amounts, if any, included in the retail installment contract, if separate identified charges are stated therein, for insurance and governmental charges, less the amount of the purchaser's downpayment, if any, in money or goods or both.

(9) "Retail installment contract" means a contract entered into in the District or entered into by a seller licensed or required to be licensed by the District evidencing a retail installment transaction pursuant to which the title

to or a lien on, or security or a security interest in, the motor vehicle, which is the subject matter of the transaction, is retained or taken to secure, in whole or in part, the retail buyer's obligations. The term includes a security agreement, chattel mortgage, conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the value of the motor vehicle sold and it is agreed that the bailee or lessee is bound to become, or, for no further or a merely nominal consideration, has the option of becoming, the owner of the motor vehicle upon full compliance with the terms of the bailment or lease.

(10) "Retail installment transaction" means any transaction in which a retail buyer purchases a motor vehicle for a price in excess of the cash sale price and agrees to pay part or all of such price in one or more deferred installments.

(11) "Security interest" and "secured party" have the same meanings as those given to the terms in §§ 28:1-201 and 28:9-105 (m). (Apr. 22, 1960, 74 Stat. 69, Pub. L. 86-431, § 1; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 9; 1973 Ed., § 40-901; Mar. 5, 1981, D.C. Law 3-135, § 3, 27 DCR 4526; Mar. 15, 1985, D.C. Law 5-176, § 6, 32 DCR 748.)

Cross references. — As to applicability of provisions of this chapter to secured transactions, see § 28:9-203.

Section references. — This section is referred to in § 22-3815.

Legislative history of Law 3-135. — Law 3-135 was introduced in Council and assigned Bill No. 3-331, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on September 16, 1980 and September 30, 1980, respectively. Signed by the Mayor on October 2, 1980, it was assigned Act No. 3-256 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-176. — See note to § 40-208.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Sales contract void for violations of chapter. — Where a used car dealer violated numerous fundamental provisions of this chapter, a sales contract is illegal and void and the sales contract, being unenforceable, gave the dealer no right to foreclose on the automobile. *Vines v. Hodges*, 422 F. Supp. 1292 (D.D.C. 1976).

Where sellers of used car wrongfully foreclosed on car, buyers are entitled to damages in the amount of the payments they had made, minus the rental value of the car for the period during which buyers used it and minus the cost of towing the car from the point where it broke down, which cost sellers incurred at buyers' request. *Vines v. Hodges*, 422 F. Supp. 1292 (D.D.C. 1976).

Common law and Truth in Lending Act remedies available. — Nothing in the Truth in Lending Act suggests that the provision for statutory damages and traditionally available common-law remedies were meant to be mutually exclusive and, therefore, aggrieved buyers are entitled to common-law remedy of rescission based on non-TILA causes of action as well as to damages for wrongful repossession and the statutory damage award under the TILA. *Vines v. Hodges*, 422 F. Supp. 1292 (D.D.C. 1976).

Punitive damages. — Where undisputed facts do not warrant the finding that defendants knowingly and willfully violated statutes

and regulations applicable to sale of used car and where it is not established that price of used car contained an exorbitant finance charge, no award of punitive damages is proper

on summary judgment motion, in action under the Truth in Lending Act and this chapter. *Vines v. Hodges*, 422 F. Supp. 1292 (D.D.C. 1976).

§ 40-1102. Maximum finance charges; computation; proportionate adjustments; investigation of economic conditions to determine finance charges; regulations; classification of parties; waiver.

(a) Notwithstanding the provisions of any instrument of security, refinancing contract, or other instrument to the contrary, made or entered into on or after March 5, 1981, no person shall charge, contract for, receive, or collect a finance charge if such charge exceeds the larger of \$25 or an amount determined under the following schedule:

Class 1. Any new domestic motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made and any new foreign motor vehicle — 21.5% annual percentage rate.

Class 2. Any new domestic motor vehicle not in class 1 and any used domestic motor vehicle designated by the manufacturer by a year model of the same or not more than 2 years prior to the year in which the sale is made and any used foreign motor vehicle not more than 2 years old — 23.5% annual percentage rate.

Class 3. Any used motor vehicle not in class 2, and, if a domestic motor vehicle, designated by the manufacturer by a year model not more than 4 years prior to the year in which the sale is made, and, if a foreign motor vehicle, not more than 4 years old — 27% annual percentage rate.

Class 4. Any used motor vehicle not in class 2 or class 3 — 28.33% annual percentage rate.

(b) The finance charge authorized by the preceding subsection shall be computed on the principal balance payable for a motor vehicle from the date of the instrument or contract until the maturity of the final installment, notwithstanding that the balance thereof is required to be paid in installments.

(c) For a period less or greater than 12 months or for amounts less or greater than \$100, the amount of the maximum charge set forth in the foregoing schedule shall be decreased or increased proportionately.

(d) The Mayor shall from time to time investigate the economic conditions and other factors relating to and affecting finance charges, and shall ascertain all pertinent facts necessary to determine what maximum charges should be permitted in such transactions. Upon the basis of such ascertained facts, the Council of the District of Columbia, notwithstanding the provisions of the preceding subsections, shall from time to time by regulation or order determine and fix the maximum finance charges sufficiently high to result in a fair return on investment to persons engaged in the business of financing retail installment transactions, but not so high as to constitute an unreasonable economic burden on the purchasers of motor vehicles under retail installment contracts.

The Council may from time to time, upon the basis of changed conditions or facts, redetermine and refix any such maximum finance charge, but, before determining or redetermining any such maximum charge, the Council shall give reasonable notice of its intention to consider doing so, and provide a reasonable opportunity to persons desiring to be heard with respect to any such proposed determination or redetermination. Notice of the action proposed by the Council shall be published once a week for 2 consecutive weeks in one or more of the daily newspapers published in the District. Any such changed maximum finance charge shall not affect any pre-existing instrument of security lawfully entered into between the seller and the purchaser of any motor vehicle.

(e)(1) The Council is hereby authorized to make, and the Mayor is authorized to enforce, such regulations as the Council in its discretion deems appropriate to carry out the purposes of this section and to prevent unconscionable practices in connection with retail installment transactions, including, without limitation, provisions:

(A) Governing the form and substance of instruments of security;

(B) Requiring that installment payments under instruments of security be made in substantially equal amounts and at regular intervals except:

(i) That the interval for the first installment payment may be longer than the other intervals;

(ii) That the final installment payment may be less in amount than the preceding installment payments;

(iii) That where a buyer's livelihood is dependent upon seasonal or intermittent income, one or more installment payments in the schedule of payments included in any such instrument of security may be reduced or omitted; and

(iv) That any contract covering a new motor vehicle to be used primarily as a demonstrator sold to a bona fide motor vehicle salesman employed by the seller shall be exempt from the requirement that installment payments be in substantially equal amounts;

(C) Requiring that amounts due under instruments of security may be prepaid in full and that the unearned charges, whether for finance, insurance, or for other purposes, attributable to or resulting from such prepayments shall be refunded or credited;

(D) Establishing maximum delinquency, collection, repossession and other charges;

(E) Specifying the types and maximum amounts of insurance which may be required, at the expense of the retail buyer, to protect from loss the seller in a retail installment transaction or his assignee or any other person entitled to payments from a retail buyer under an instrument of security;

(F) Respecting the manner and methods of notice of default given to a retail buyer before and after a seller's repossession of a motor vehicle, the methods and opportunity for cure and redemption, and the manner and method of sale or disposition of repossessed motor vehicles;

(G) Requiring the books and records of persons engaged in the business of financing retail installment transactions to be subject to production for examination by the Mayor.

(2) The Council is further authorized, in its discretion, to make, and the Mayor enforce, such additional regulations as it deems necessary to insure that purchasers of motor vehicles under instruments of security are not being required, directly or indirectly, to pay finance, insurance, or other charges in excess of those authorized by this chapter or by the Council pursuant to the authority vested in it.

(3) In exercising their powers and authority under this subsection, the Council is authorized, in its discretion, to make reasonable classifications:

(A) According to the parties to retail installment transactions; or

(B) According to the parties to the instruments of security; or

(C) According to the parties involved in repossession; or

(D) According to other bases; or

(E) According to 2 or more of the foregoing subparagraphs (A) through (D), and to exercise such powers and authority under this subsection with respect to any one or more of any classifications so made or with respect to all of said classifications.

(f) No provision shall be inserted in any retail installment contract whereby the buyer waives or purports to waive any provision of this chapter, and any such waiver or purported waiver shall be void and of no effect. The Council is authorized in its discretion, by regulation:

(1) To prohibit the inclusion in any retail installment contract of any provision waiving or purporting to waive any provision of any regulation promulgated by the Council relating to retail installment transactions; and

(2) To provide that any such waiver or purported waiver, shall be void and of no effect. (Apr. 22, 1960, 74 Stat. 69, Pub. L. 86-431, § 2; 1973 Ed., § 40-902; Sept. 16, 1980, D.C. Law 3-102, § 8, 27 DCR 3630; Mar. 5, 1981, D.C. Law 3-135, § 2, 27 DCR 4526; Mar. 31, 1982, D.C. Law 4-90, § 3, 29 DCR 666.)

Legislative history of Law 3-102. — Law 3-102 was introduced in Council and assigned Bill No. 3-283, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 3, 1980 and June 17, 1980, respectively. Signed by the Mayor on July 16, 1980, it was assigned Act No. 3-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-135. — See note to § 40-1101.

Legislative history of Law 4-90. — Law 4-90 was introduced in Council and assigned Bill No. 4-17, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 8, 1981, and January 12, 1982, respectively. Signed by the Mayor on February 4, 1982, it was assigned Act No. 4-148 and transmitted to both Houses of Congress for its review.

Findings and purposes of Law 4-90. — See § 2 of D.C. Law 4-90.

Change in government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(310 to 314) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

This section authorizes specification of what charges may be included in install-

ment contracts. *Franklin Inv. Co. v. Tobriner*, 296 F.2d 451 (D.C. Cir. 1961).

Creditor's obligation to give notice governed by Council regulations. — Regulations promulgated by the District Council pursuant to this chapter govern a creditor's obligation to give the debtor notice of repossession and resale of collateral. *Randolph v. Franklin Inv. Co.*, App. D.C., 398 A.2d 340 (1979).

Provision for deficiency judgment. — Following the repossession and sale of an automobile under a conditional sales contract, a finance company was properly granted a defi-

ciency judgment though the cash price of the vehicle was less than \$2,000, and despite the contention that the exemption under § 28:3-812 for direct motor vehicle installment loans from preclusions of deficiency judgment where cash price is \$2,000 or less applies only to the benefit of banking institutions. *Randolph v. Franklin Inv. Co.*, App. D.C., 398 A.2d 340 (1979).

Cited in *Franklin Inv. Co. v. Smith*, App. D.C., 383 A.2d 355 (1978); *Gavin v. Washington Post Employees Fed. Credit Union*, App. D.C., 397 A.2d 968 (1979).

§ 40-1103. Bonding of automobile dealers and applicants; liability insurance; designation of Mayor as agent for service of process; limitation on bonds; action on bonds.

(a) In connection with the licensing of persons under the authority of Chapter 28 of Title 47, the Council of the District of Columbia is authorized to require either bonds or such other security as it may by regulation deem necessary, of persons licensed to engage in the business of buying or selling motor vehicles and of persons licensed to engage in the business of purchasing contracts for the retail installment sales of motor vehicles, and the Council may, from time to time, and in its discretion, establish classes and subclasses of such persons and, subject to subsection (b) of this section, specify the amount and conditions of the bond to be deposited by each of the members of any such class or subclass. In connection with the licensing of said persons, and the bonding of the members of any class or subclass of the said persons, the Council, in its discretion, may by regulation require applicants for licenses:

(1) To furnish and keep in force a bond running to the District, or other security, to protect members of the public against financial loss by reason of the failure of the licensee or of any officer, agent, employee, or other person acting on behalf of said licensee, to observe any law or regulation in force in the District of Columbia applicable to the licensee's conduct of the licensed business;

(2) To procure and keep in force public liability insurance or property damage insurance, or both; and

(3) To appoint the Mayor as their true and lawful attorney upon whom all judicial and other process or legal notice directed to such person may be served.

(b)(1) The bonds authorized by this section shall be corporate surety bonds in amounts to be fixed by the Mayor, but no bond shall exceed \$25,000, except as required by paragraph (2) of this subsection.

(2) Each person licensed to do business as a motor vehicle dealer in the District shall maintain a corporate surety bond in an amount not less than \$25,000.

(3) The bond shall be conditioned upon the observance by the licensee and any officer, agent, employee, or other person acting on behalf of the licensee, of all laws and regulations in force in the District applicable to the licensee's

conduct of the licensed business, for the benefit of any person who may suffer damages resulting from the violation of any law or regulation by or on the part of the licensee or any officer, agent, employee, or other person acting on behalf of the licensee.

(c) Any person aggrieved by the violation of any law or regulation applicable to the licensee's conduct of the licensed activity shall have, in addition to his right of action against such licensee, a right to bring suit against the surety on a bond authorized by this section, either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the licensee, or of any officer, agent, employee, or other person acting on behalf of said licensee, which is in violation of law or regulation in force in the District relating to the licensed activity. The provisions of paragraphs (2), (3), and (5) of subsection (b) of § 1-337, shall be applicable to each bond authorized by this section as if it were the bond authorized by the first subparagraph of such subsection (b) of § 1-337; provided, that nothing in this subsection shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished after any prior recovery or recoveries. (Apr. 22, 1960, 74 Stat. 71, Pub. L. 86-431, § 3; 1973 Ed., § 40-903; Mar. 14, 1985, D.C. Law 5-162, § 7, 32 DCR 160.)

Cross references. — As to Automobile Consumer Protection Act, see Chapter 13 of Title 40.

As to application of and limitation of actions under D.C. Law 5-162, the Automobile Consumer Protection Act of 1984, see § 40-1307.

As to rules and regulations implementing Automobile Consumer Protection Act, see § 40-1308.

Legislative history of Law 5-162. — See note to § 40-1301.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(315)

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-1104. Delegation of functions; exception.

With the exception of the function of making regulations to carry out the purposes of this chapter, the Mayor is authorized to delegate, with power to redelegate, any of the functions vested in him by this chapter. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 5; 1973 Ed., § 40-904.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-1105. Council to make regulations; public hearings.

The Council of the District of Columbia is authorized to promulgate regulations to carry out the purposes of this chapter; provided, that no such regulation shall become effective until after a public hearing has been held thereon. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 6; 1973 Ed., § 40-905.)

New implementing regulations. — Pursuant to this section, the following new regulations were adopted in 1982: The “District of Columbia Automobile Financing and Repossession Act of 1981” (D.C. Law 4-90, March 31, 1982, 29 DCR 666).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(316) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-1106. False statements.

No person shall make any statement required or authorized by this chapter to be filed with the Mayor, knowing that the information set forth in such statement is false. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 7; 1973 Ed., § 40-906.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-1107. Penalties.

Any person who shall violate any provision of this chapter or of any regulation promulgated by the Council of the District of Columbia under the authority of this chapter, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment for not more than 6 months, or both. Civil fines, penalties, and fees may be imposed as

alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 8; 1973 Ed., § 40-907; Oct. 5, 1985, D.C. Law 6-42, § 435, 32 DCR 4450.)

Legislative history of Law 6-42. — Law 6-42 was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (309 to 316) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Sales contract void for violations of chapter. — Where a used car dealer violated numerous fundamental provisions of this chap-

ter, a sales contract is illegal and void and the sales contract, being unenforceable, gave dealer no right to foreclose on the automobile. *Vines v. Hodges*, 422 F. Supp. 1292 (D.D.C. 1976).

Where sellers of used car wrongfully foreclosed on car, buyers are entitled to damages in the amount of the payments they had made, minus the rental value of a car for the period during which buyers used it and minus the cost of towing the car from the point where it broke down, which cost sellers incurred at buyers' request. *Vines v. Hodges*, 422 F. Supp. 1292 (D.D.C. 1976).

Common law and Truth in Lending remedies available. — Nothing in the Truth in Lending Act suggests that the provision for statutory damages and traditionally available common-law remedies were meant to be mutually exclusive and, therefore, aggrieved buyers are entitled to common-law remedy of rescission based on non-TILA causes of action as well as to damages for wrongful repossession and the statutory damage award under the TILA. *Vines v. Hodges*, 422 F. Supp. 1292 (D.D.C. 1976).

Punitive damages. — Where undisputed facts do not warrant the finding that defendants knowingly and wilfully violated statutes and regulations applicable to sale of used car and where it is not established that price of used car contained an exorbitant finance charge, no award of punitive damages is proper on summary judgment motion, in action under the Truth in Lending Act and this chapter. *Vines v. Hodges*, 422 F. Supp. 1292 (D.D.C. 1976).

§ 40-1108. Prosecutions.

Prosecutions for violations of this chapter, or of the regulations made pursuant thereto, shall be conducted in the name of the District by the Corporation Counsel or any of his assistants. As used in this chapter the term "Corporation Counsel" means the attorney for the District, by whatever title such attorney may be known, designated by the Mayor to perform the functions prescribed for the Corporation Counsel in this chapter. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 9; 1973 Ed., § 40-908.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section of a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-1109. Additional authority granted to Mayor.

The authority and power vested in the Mayor by any provision of this chapter shall be deemed to be additional and supplementary to authority and power now vested in him, and not as a limitation. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 10; 1973 Ed., § 40-909.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 40-1110. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not effect other provisions or the application of this chapter which can be effected without the invalid provision or application, and to this end the provisions of this chapter are severable. (Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 11; 1973 Ed., § 40-910.)

CHAPTER 12. CHILD RESTRAINT.

Sec.	Sec.
40-1201. Findings; purpose.	40-1205. Application of chapter.
40-1202. Definitions.	40-1206. Penalty; waiver of fine.
40-1203. Requirements.	40-1207. Evidentiary effect; basis for civil liability.
40-1204. Seats to conform to federal safety standards.	40-1208. Rules; public information program.

§ 40-1201. Findings; purpose.

The Council of the District of Columbia finds that:

(1)(A) Nationally, motor vehicle accidents are the leading cause of death of children of less than 6 years of age;

(B) In 1981, over 600 children of less than 6 years of age were reported injured in motor vehicle accidents in the District of Columbia, reflecting an increase of 16% over reported injuries in 1980 and 40% over reported injuries in 1979;

(C) Young children, due to their small size and early skeletal development, are at a much greater risk of serious bodily injury in motor vehicle accidents than are adults;

(D) Proper use of child restraint seats and safety belts has been estimated to reduce by as much as 90% and 67%, respectively, the fatalities and injuries to children resulting from motor vehicle accidents;

(E) Reducing fatalities and injuries to children from motor vehicle accidents through the proper use of child restraint seats and safety belts would result in a significant reduction of the social and economic burdens which these accidents place upon families, insurers, and the public generally;

(F) Project Safe-Child is a cooperative program conducted by the Office of Child Health Advocacy at Children's Hospital National Medical Center and the Transportation Safety Division of the Office of Policy and Program Development in the District of Columbia Department of Transportation which includes a child restraint loaner program for the distribution of child restraints to residents of the District of Columbia; and

(G) Project Safe-Child's public information program and child restraint loaner programs, upon being expanded through greater allocation of federal grant funds from the National Highway Traffic Safety Administration, can assist the public in complying with this chapter.

(2) It is the purpose of this chapter to require that children of less than 16 years of age be protected by being properly restrained in a child restraint seat or safety belt when riding in a motor vehicle. (Mar. 10, 1983, D.C. Law 4-194, § 2, 30 DCR 49; Mar. 7, 1992, D.C. Law 9-57, § 2(a), 38 DCR 7283.)

Legislative history of Law 4-194. — Law 4-194, "Child Restraint Act of 1982," was introduced in Council and assigned Bill No. 4-434, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December

28, 1982, it was assigned Act No. 4-278 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-57. — Law 9-57, the "Child Restraint Act of 1982 Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-100, which was referred to the Committee on Public Works. The Bill was

adopted on first and second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-100 and transmitted to both Houses of Congress for its review.

Transfer of functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 40-1202. Definitions.

As used in this chapter the term:

(1) “Child restraint seat” means any motor vehicle restraint system which has been designed to protect children and has been approved pursuant to § 40-1204.

(2) “Operator” means a person who drives or is in actual physical control of a vehicle.

(3) “Properly restrained,” when used in reference to the use of a safety belt, means secured with the lap portion of a safety belt which is provided in a motor vehicle; and when used in reference to the use of a child restraint seat, means secured in a child restraint seat which itself has been fastened to the motor vehicle by a safety belt and in which all securing straps are being used.

(4) “Transport” means to have a child of less than 16 years of age as a passenger in a motor vehicle while the operator is seated in the driver position and the motor vehicle is either parked or in motion.

(5) “Motor vehicle” means any device with more than 3 wheels and a seating capacity of 8 or fewer passengers, exclusive of the operator, which is propelled by an internal-combustion engine, electricity, or steam, and which is designed, used, or maintained for passenger or recreational purposes, or which is designed, used, or maintained for transporting freight, merchandise, or other commercial loads or property.

The term “motor vehicle” does not include any device which is used for livery, sightseeing, taxi, ambulance, funeral, or farm purposes; or any device with more than 3 wheels which is propelled by an internal-combustion engine, electricity, or steam and which has a seating capacity of more than 8 passengers, exclusive of the operator. (Mar. 10, 1983, D.C. Law 4-194, § 3, 30 DCR 49; May 16, 1995, D.C. Law 10-255, § 35, 41 DCR 5193.)

Legislative history of Law 4-194. — See note to § 40-1201.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted

on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

§ 40-1203. Requirements.

(a) The operator of a motor vehicle may not transport any child of less than 3 years of age unless the child is properly restrained in a child restraint seat.

(b) The operator of a motor vehicle may not transport any child between 3 years of age and 16 years of age unless the child is properly restrained in an approved child restraint seat or safety belt.

(c) A parent or legal guardian may transport his or her own child without restraint herein if that person is transporting a number of his or her own children of less than 16 years of age which exceeds the number of passenger positions equipped with safety belts in the motor vehicle. However, an unrestrained child may not be transported in the front seat of a motor vehicle. (Mar. 10, 1983, D.C. Law 4-194, § 4, 30 DCR 49; Mar. 7, 1992, D.C. Law 9-57, § 2(b), 38 DCR 7283.)

Section references. — This section is referred to in § 40-1206.

Legislative history of Law 4-194. — See note to § 40-1201.

Legislative history of Law 9-57. — See note to § 40-1201.

§ 40-1204. Seats to conform to federal safety standards.

Child restraint seats shall conform to all applicable federal motor vehicle safety standards established pursuant to § 103 of Title 1 of the National Traffic and Motor Vehicle Safety Act of 1966, approved September 9, 1966 (80 Stat. 719; 15 U.S.C. § 1392). (Mar. 10, 1983, D.C. Law 4-194, § 5, 30 DCR 49.)

Section references. — This section is referred to in § 40-1202.

Legislative history of Law 4-194. — See note to § 40-1201.

References in text. — 15 U.S.C. § 1392, referred to in this section, was repealed in 1994 by P.L. 103-272, § 7(b). For present law, see 49 U.S.C. § 30101 et seq.

§ 40-1205. Application of chapter.

This chapter shall apply to any person operating a motor vehicle in the District of Columbia. (Mar. 10, 1983, D.C. Law 4-194, § 6, 30 DCR 49; Mar. 7, 1992, D.C. Law 9-57, § 2(c), 38 DCR 7283.)

Legislative history of Law 4-194. — See note to § 40-1201.

Legislative history of Law 9-57. — See note to § 40-1201.

§ 40-1206. Penalty; waiver of fine.

(a) Any individual who violates any provision of this chapter shall be subject to a fine of \$55, and the violation shall be processed and adjudicated under the provisions applicable to parking, standing, stopping, and pedestrian infractions which are set forth in subchapter III of Chapter 6 of this title.

(b) The fine for the first violation of § 40-1203(a) by any operator shall be waived upon presentation of proof by the operator that an approved child restraint seat has been acquired subsequent to the violation, either by purchase, gift, or through an officially designated child restraint seat loan program, by the operator or by the parent or legal guardian of the child who was transported without being properly restrained.

(c) The Director of the Department of Transportation shall assign 2 points under the provisions of 18 DCMR to the driver record of any person convicted of a violation of this chapter. (Mar. 10, 1983, D.C. Law 4-194, § 7, 30 DCR 49; Mar. 7, 1992, D.C. Law 9-57, § 2(d), 38 DCR 7283.)

Legislative history of Law 4-194. — See note to § 40-1201.

Legislative history of Law 9-57. — See note to § 40-1201.

Transfer of functions. — The functions of

the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 40-1207. Evidentiary effect; basis for civil liability.

Neither a violation of this chapter nor compliance herewith shall constitute any evidence of negligence or contributory negligence, nor shall either a violation or compliance provide any basis for a civil action for damages. (Mar. 10, 1983, D.C. Law 4-194, § 8, 30 DCR 49.)

Legislative history of Law 4-194. — See note to § 40-1201.

§ 40-1208. Rules; public information program.

Within 180 days from March 7, 1992, the Mayor shall issue rules to implement this chapter and, through public or private programs, shall maintain a child restraint seat loan program for residents of the District of Columbia, and make available to the public information about this chapter. (Mar. 10, 1983, D.C. Law 4-194, § 9, 30 DCR 49; Mar. 7, 1992, D.C. Law 9-57, § 2(e), 38 DCR 7283; Feb. 5, 1994, D.C. Law 10-68, § 34, 40 DCR 6311.)

Effect of amendments. — D.C. Law 9-57 rewrote the section.

Legislative history of Law 4-194. — See note to § 40-1201.

Legislative history of Law 9-57. — See note to § 40-1201.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Commit-

tee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Delegation of authority under Law 4-194. — See Mayor’s Order 83-174, June 23, 1983.

CHAPTER 13. AUTOMOBILE CONSUMER PROTECTION.

Sec.	Sec.
40-1301. Definitions.	40-1306. Listing of odometer readings.
40-1302. Consumer's remedy for defective vehicles.	40-1307. Other rights or remedies; limitations on actions.
40-1303. Arbitration.	40-1308. Rules and regulations.
40-1304. Disclosure of rights.	40-1309. Provision for alternative arbitration system.
40-1305. Disclosure of damages or defects in used motor vehicles; violations; penalties.	40-1310. Suspension of enforcement.

§ 40-1301. Definitions.

For the purposes of this chapter, the term:

(1) "Board" means the Board of Consumer Claims Arbitration for the District of Columbia established by § 40-1303.

(2) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle; any person to whom the motor vehicle is leased or otherwise transferred during the duration of a warranty applicable to the motor vehicle; and any other person entitled to enforce the obligations of the warranty. For the purposes of § 40-1303, the term "consumer" means any natural person who does or would purchase, lease, or receive consumer goods or services. The term "consumer" includes any natural person who purchases insurance coverage in the District of Columbia.

(3) "Council" means the Council of the District of Columbia.

(4) "Court" means the Superior Court of the District of Columbia.

(5) "District" means the District of Columbia.

(6) "Known" means, for the purposes of § 40-1305, that a dealer or the dealer's agent or employee has obtained facts or information about the condition of a motor vehicle which would lead a reasonable person in similar circumstances to believe that the motor vehicle contained 1 or more material mechanical defects. The term "known" encompasses knowledge obtained through an inspection, from a previous owner, from the salesperson at an auction, or through other means.

(7) "Material mechanical defect" means any defect, failure, or malfunction of the mechanical system of a motor vehicle, including, but not limited to, the engine, transmission and drive shaft, differential, cooling system, electrical system, fuel system, or accessories, which significantly impairs the operation, safety, performance, or value of the motor vehicle.

(8) "Mayor" means the Mayor of the District of Columbia.

(9) "Motor vehicle" means a motor vehicle which is manufactured for sale, offered for sale, sold, or registered in the District and which is designed for the primary purpose of transporting a driver and 1 or more passengers on streets, roads, or highways. The term "motor vehicle" shall not include buses sold for public transportation, motorcycles, motor homes, or motorized recreational vehicles.

(10) "New motor vehicle" means a motor vehicle which is in the period of the first 18,000 miles of operation or the first 2 years after the date of delivery to the original purchaser, whichever is earlier.

(11) "Safety-related defect" means an impairment which reduces the operator's ability to control the motor vehicle in normal operation or which creates a risk of fire, explosion, or other life-threatening malfunction.

(12) "Significantly impair" means to render the motor vehicle unreliable or unsafe for normal operation or to reduce its resale value below the average resale value for comparable motor vehicles.

(13) "Used motor vehicle" means a motor vehicle which is offered for sale in the District and which is not within the period of the first 18,000 miles of operation or the first 2 years after the date of delivery to the original purchaser, whichever is earlier; but it does not mean a motor vehicle sold only for scrap or parts.

(14) "Warranty" means the written or implied warranty of the manufacturer of a motor vehicle. (Mar. 14, 1985, D.C. Law 5-162, § 2, 32 DCR 160; Mar. 4, 1986, D.C. Law 6-96, § 4(a), 32 DCR 7245.)

Cross references. — As to direct motor vehicle installment loans, see § 28-3601.

As to consumer protection generally, see Chapters 38 and 39 of Title 28.

As to bonding of automobile dealers and applicants, see § 40-1103.

Legislative history of Law 5-162. — Law 5-162 was introduced in Council and assigned Bill No. 5-288, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 7, 1984, it was assigned Act No. 5-227 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-96. — Law

6-96, "Automobile Consumer Protection Act of 1984," was introduced in Council and assigned Bill No. 6-249, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 5, 1985, and November 19, 1985, respectively. Signed by the Mayor on November 22, 1985, it was assigned Act No. 6-104 and transmitted to both Houses of Congress for its review.

Short title. — The first section of D.C. Law 5-162 provided: "That this act may be cited as the 'Automobile Consumer Protection Act of 1984'."

Cited in Zanganeh v. BMW of N. Am., Inc., 119 WLR 897 (Super. Ct. 1991).

§ 40-1302. Consumer's remedy for defective vehicles.

(a) If a new motor vehicle does not conform to all warranties during the first 18,000 miles of operation or during the period of 2 years following the date of delivery of the motor vehicle to the original purchaser, whichever is the earlier date, the consumer shall during that period report the nonconformity, defect, or condition to the manufacturer, its agent, or its authorized dealer. If the notification is received by the manufacturer's agent or authorized dealer, the agent or dealer shall within 7 days forward written notice thereof to the manufacturer by certified mail, return receipt requested. The manufacturer, its agent, or its authorized dealer shall correct the nonconformity, defect, or condition at no charge to the consumer, notwithstanding the fact that the repairs may be made after the expiration of the first 18,000-mile period of operation or the 2-year period.

(b) If, after a reasonable number of attempts, the manufacturer, its agent, or authorized dealer is unable to repair or correct any nonconformity, defect, or condition which results in significant impairment of the motor vehicle, the manufacturer, at the option of the consumer, shall replace the motor vehicle with a comparable motor vehicle, or accept return of the motor vehicle from the

consumer and refund to the consumer the full purchase price, including all sales tax, license fees, registration fees, and any similar governmental charges. In calculating a refund, the manufacturer may deduct from the consumer's full purchase price a reasonable allowance not to exceed 10 cents per mile for the consumer's use of the motor vehicle in excess of the first 12,000 miles of operation, and a reasonable allowance for any damage not attributable to normal wear or to the nonconformity, defect, or condition which significantly impaired the motor vehicle. Refunds shall be made to the consumer, and the lienholder, if any, as their interests may appear on the records of ownership kept by the Department of Public Works.

(c) Each of the following circumstances shall be an affirmative defense to any claim under this section:

(1) The nonconformity, defect, or condition does not significantly impair the vehicle.

(2) The nonconformity, defect, or condition is the result of abuse, neglect, or unauthorized modifications or alterations of the motor vehicle.

(d) It shall be presumed that a reasonable number of attempts have been made to conform a motor vehicle to the warranties, if:

(1) The same nonconformity, defect, or condition, if it is not safety-related, has been subject to repair 4 or more times by the manufacturer, its agent, or authorized dealer after notification by the consumer within the first 18,000 miles of operation or during the period of 2 years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but the nonconformity, defect, or condition continues to exist;

(2) The same nonconformity, defect, or condition, if it is safety-related, has been subject to repair 1 or more times by the manufacturer, its agents, or authorized dealers after notification by the consumer within the first 18,000 miles of operation or during the period of 2 years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but the nonconformity, defect, or condition continues to exist; or

(3) The motor vehicle is out of service by reason of repair of any nonconformities, defects, or conditions which significantly impair the vehicle, on a cumulative total of 30 days or more during either period, whichever is the earlier date.

(e) The 30-day out-of-service period shall be extended by any time during which repair services are not available to the consumer because of a war, invasion, strike, fire, flood, or other natural disaster.

(f) The consumer, in order to seek the refund or replacement provided by this section, shall first submit a claim to the Board of Consumer Claims Arbitration established pursuant to § 40-1303. If the Board rejects the case for arbitration, or if the claim is arbitrated and the consumer rejects the arbitration decision, the consumer may then bring an action in court to seek the remedies provided by this section.

(g)(1) If a motor vehicle is returned to a manufacturer, its agent, or authorized dealer pursuant to this section, the manufacturer, its agent, or authorized dealer shall notify the Department of Public Works that the motor vehicle was returned.

(2) The Department of Public Works shall note the fact that the motor vehicle was returned pursuant to this chapter on any certificate of title issued for the motor vehicle.

(3) A motor vehicle dealer shall state the fact that the motor vehicle was returned pursuant to this chapter in any sales contract for the motor vehicle prior to the signing of the contract by a prospective purchaser. (Mar. 14, 1985, D.C. Law 5-162, § 3, 32 DCR 160.)

Section references. — This section is referred to in § 40-1303.

Legislative history of Law 5-162. — See note to § 40-1301.

Cited in *Zanganeh v. BMW of N. Am., Inc.*, 119 WLR 897 (Super. Ct. 1991).

§ 40-1303. Arbitration.

(a) There is established in the Department of Consumer and Regulatory Affairs a Board of Consumer Claims Arbitration for the District of Columbia. The Board shall consist of 7 members who shall be appointed by the Mayor with the advice and consent of the Council.

(b) The members shall be at least 18 years of age and residents of the District.

(c) Two members shall be attorneys admitted to the practice of law in the District, 1 of whom shall be designated by the Mayor as chairperson of the Board. Two members shall have training and experience in arbitration and mediation. One member shall be the Director of the Department of Consumer and Regulatory Affairs or his or her designee. One member shall have experience or training in representing the interests of consumers. One member shall have experience or training in the manufacture or wholesale or retail sales of consumer goods.

(d) The Mayor shall appoint the initial Board members within 60 days of March 14, 1985. Of the members first appointed, the chairperson and 1 other member shall be appointed for terms of 3 years; 2 members shall be appointed for terms of 2 years; 1 member shall be appointed for a term of 2 years; and 1 member shall be appointed for a term of 1 year. Subsequent appointments shall be for terms of 3 years. This subsection shall not apply to the representative of the Department of Consumer and Regulatory Affairs.

(e) Members of the Board shall be compensated pursuant to § 1-612.8.

(f) The Mayor shall issue, and may amend from time to time, rules and regulations to implement the provisions of this section and may establish reasonable fees for the filing of complaints.

(g) The Board, in accordance with the rules and regulations issued pursuant to subsection (f) of this section, shall provide arbitration for claims filed by consumers against manufacturers, their agents, or dealers pursuant to §§ 40-1302 and 40-1305; for claims voluntarily filed by consumers against the provider of any consumer goods or services, who agrees to arbitration, pursuant to rules and regulations issued by the Mayor; and for claims filed pursuant to § 35-2105 by parties agreeing to arbitration pursuant to rules and regulations issued by the Mayor.

(h) Consumers may submit claims to the Board by completing forms which shall be approved by the Mayor.

(i) Upon receipt of a written claim filed by a consumer, the Board shall within 5 business days determine whether the claim qualifies for arbitration pursuant to this chapter and notify the opposing party.

(j) The Board shall develop and maintain a roster of persons who are residents of the District, at least 18 years of age, and experienced in arbitration techniques who may be employed to serve as arbitrators for specific cases.

(k) The Board shall assign cases for arbitration according to the following provisions:

(1) A case may be assigned to a single arbitrator if the Board first informs all parties to the case of the identity and background of the arbitrator and obtains their consent. When a case is assigned to a single arbitrator, the arbitrator must be an attorney-member of the Board or another attorney admitted to the practice of law in the District and chosen from the roster of arbitrators maintained by the Board.

(2) All cases not assigned to single arbitrators shall be assigned to a panel of 3 arbitrators, 1 of whom must be a member of the Board and 1 of whom must be an attorney admitted to the practice of law in the District. Participation on the panel by an attorney-member of the Board shall satisfy both requirements. The Board shall inform all parties to the case of the identity and background of the arbitrators tentatively selected for the panel and shall obtain the consent of both parties to the choice of arbitrators. The decision of the panel shall be by majority vote.

(l) The Board is authorized to reject for arbitration consumer claims which are determined by a majority of the Board to be frivolous, fraudulent, or beyond the legal authority of the Board.

(m) The Board shall promptly assign all cases accepted for arbitration to an arbitrator or arbitrators who shall appoint a time and place for a hearing and notify the parties personally or by registered mail not less than 5 days prior to the hearing. Hearings shall be public and shall be recorded electronically.

(n) At all arbitration hearings, the parties are entitled to present oral and written testimony, to present witnesses and evidence relevant to the controversy, to cross-examine witnesses, and to be represented by counsel.

(o) The Board may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence. The Board or arbitrators designated by the Board shall have the power to administer oaths and affirmations and take acknowledgements.

(p) Upon application by any party to an arbitration proceeding, or upon its own motion, an arbitrator or arbitration panel may retain independent technical experts as needed to determine the facts in the case. The arbitrator or arbitration panel may assign the costs of the technical experts to 1 or both parties to the case.

(q)(1) The arbitrator or arbitration panel shall determine whether the defendant is liable to the claimant and, if so, shall award the claimant relief.

(2) The arbitrator or arbitration panel may award the claimant the relief provided by this chapter, any relief available under any other law, and

reasonable attorneys' fees. The defendant may be assessed the costs of arbitration as part of any award rendered by the arbitrator or arbitration panel.

(3) Decisions of an arbitrator or arbitration panel shall be in writing and shall be entered by and in the name of the Board.

(4) Decisions shall be entered no later than 60 days from the date the Board accepts a case for arbitration.

(5) The decision shall state the relief granted, if any, and shall specify a time limit for compliance.

(6) The board shall promptly provide a copy of the decision to each party.

(r) The Board or any party to a case may petition the court to issue an order compelling compliance with a decision by the Board.

(s)(1) Any party to a case may, within 20 days after receipt of the Board's decision, petition the court to vacate the decision and grant a trial de novo.

(2) Upon receipt of a petition, the court shall first determine the validity of the arbitration proceeding and shall vacate an arbitration award upon a finding that:

(A) The award was procured by corruption, fraud, or other misconduct in violation of law;

(B) The arbitrator or arbitration panel exceeded its powers;

(C) The arbitrator or arbitration panel failed to conform to the rules and regulations issued pursuant to this chapter, and the failure to conform prejudiced the rights of a party to the complaint; or

(D) The award is based on a numerical error or other error of fact which the Board has failed to correct.

(3) If the court determines the arbitration process was valid but grants the petition for a trial de novo on other grounds, the decision of the Board shall be admissible as evidence and shall be presumed correct. (Mar. 14, 1985, D.C. Law 5-162, § 4, 32 DCR 160; Mar. 4, 1986, D.C. Law 6-96, § 4(b), 32 DCR 7245; Feb. 24, 1987, D.C. Law 6-192, § 16, 33 DCR 7836.)

Section references. — This section is referred to in §§ 35-2105, 40-1301, 40-1302 and 40-1309.

Legislative history of Law 5-162. — See note to § 40-1301.

Legislative history of Law 6-96. — See note to § 40-1301.

Legislative history of Law 6-192. — Law 6-192 was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986

and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

Delegation of authority under D.C. Law 5-162. — See Mayor's Order 85-181, November 5, 1985.

De novo trial jurisdiction. — There is nothing in the Lemon Law that would preclude a de novo trial under it from occurring in federal court. *Zanganeh v. BMW of N. Am., Inc.*, 119 WLR 897 (Super. Ct. 1991).

§ 40-1304. Disclosure of rights.

(a) The manufacturer, its agent, or authorized dealer shall provide written notification to the prospective consumer of any motor vehicle to be sold or registered in the District of the rights provided to the consumer by this chapter.

(b) The Mayor shall issue rules and regulations prescribing the form and content of the notification required by this section.

(c) Any agreement entered into by a consumer for the purchase of a motor vehicle which waives, limits, or disclaims the rights set forth in this chapter shall be void. These rights shall inure to a subsequent transferee of the motor vehicle. (Mar. 14, 1985, D.C. Law 5-162, § 5, 32 DCR 160.)

Legislative history of Law 5-162. — See 5-162. — See Mayor's Order 85-181, November 5, 1985.
note to § 40-1301.

Delegation of authority under D.C. Law

§ 40-1305. Disclosure of damages or defects in used motor vehicles; violations; penalties.

(a) No motor vehicle dealer may offer for sale any used motor vehicle without first providing:

(1) Written notice to the prospective consumer of any material mechanical defect in the motor vehicle and any damage sustained by the motor vehicle due to fire, water, collision, or other causes for which the cost of repairs exceeded \$1,000, when the defect or damage was known to the dealer; and

(2) Written notice to the prospective consumer whether the dealer has conducted any inspection of the motor vehicle to determine known defects or damage.

(b) A motor vehicle dealer who fails to provide the notices required by this section or who provides false or misleading notices shall, upon conviction, be subject to the following penalties:

(1) A fine of not less than \$300 or more than \$1,000 for a first offense; and

(2) A fine of not less than \$1,000 or more than \$5,000, or suspension or revocation of the license issued pursuant to § 300 of the Vehicles and Traffic Regulations (18 DCMR 300.1 et seq.), or both, for a second or subsequent offense.

(c) The purchaser of a used motor vehicle shall have a right of action against a used motor vehicle dealer for damages or injuries sustained as a result of the dealer's failure to comply with the requirements of this section. The purchaser, in order to seek the remedies provided by this section, shall first submit a claim to the Board. If the Board rejects the case for arbitration, or if the claim is arbitrated and the purchaser rejects the arbitration decision, the purchaser may then bring an action in court to seek the remedies provided by this section.

(d) Violations of this section shall be prosecuted in the name of the District of Columbia by the Corporation Counsel of the District of Columbia.

(e) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or the rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction shall be pursuant to subchapters I through III of Chapter 27 of Title 6. (Mar. 14, 1985, D.C. Law 5-162, § 6, 32 DCR 160; Oct. 5, 1985, D.C. Law 6-42, § 402, 32 DCR 4450.)

Section references. — This section is referred to in §§ 40-1301 and 40-1303.

Legislative history of Law 5-162. — See note to § 40-1301.

Legislative history of Law 6-42. — See note to § 40-1107.

§ 40-1306. Listing of odometer readings.

The Department of Public Works shall list the odometer readings at the time of registration or transfer of registration on the title of all motor vehicles registered in the District. (Mar. 14, 1985, D.C. Law 5-162, § 8, 32 DCR 160.)

Cross references. — As to registration of motor vehicles, see § 40-102.

Legislative history of Law 5-162. — See note to § 40-1301.

§ 40-1307. Other rights or remedies; limitations on actions.

(a) Nothing in this chapter shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

(b) Any action brought pursuant to this chapter shall be commenced within 4 years of the date of original delivery of the motor vehicle to the consumer. (Mar. 14, 1985, D.C. Law 5-162, § 9(b), (c), 32 DCR 160.)

Cross references. — As to unlawful trade practices, see § 28-3904.

As to bonding of automobile dealers and applicants, see § 40-1103.

§ 40-1308. Rules and regulations.

The Mayor shall issue, and may amend from time to time, rules and regulations to implement the provisions of this chapter. (Mar. 14, 1985, D.C. Law 5-162, § 10, 32 DCR 160.)

Legislative history of Law 5-162. — See note to § 40-1301.

5-162. — See Mayor's Order 85-181, November 5, 1985.

Delegation of authority under D.C. Law

§ 40-1309. Provision for alternative arbitration system.

If the arbitration system established pursuant to § 40-1303 cannot consistently handle complaints during the 60-day period as required by § 40-1303(q)(4), and if the administration of the arbitration system results in expenditures beyond the sums budgeted annually for the program, the Mayor may certify an alternative arbitration system that complies with this chapter and rules issued to implement this chapter. (Mar. 14, 1985, D.C. Law 5-162, § 11, 32 DCR 160.)

Legislative history of Law 5-162. — See note to § 40-1301.

§ 40-1310. Suspension of enforcement.

Notwithstanding any other provision of District law, enforcement of this chapter by the Department of Consumer and Regulatory Affairs is suspended

until October 1, 1998. (Mar. 14, 1985, D.C. Law 5-162, § 11a, as added, Sept. 26, 1995, D.C. Law 11-52, § 811, 42 DCR 3684.)

Emergency act amendments. — For temporary addition of section, see § 811 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 10-253. — Law 10-253, the “Multiyear Budget Spending Reduction and Support Temporary Act of 1995,” was introduced in Council and assigned Bill No. 10-857. The Bill was adopted on first and second readings on December 21, 1994, and January 3, 1995, respectively. Deemed approved without the signature of the Mayor on January 27, 1995, it was assigned Act No.

10-401 and transmitted to both Houses of Congress for its review. D.C. Law 10-253 became effective on March 23, 1995.

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

CHAPTER 14. REGULATION OF BICYCLES.

Subchapter I. General Provisions.

- Sec.
 40-1401. Findings.
 40-1402. Comprehensive Bicycle Transportation and Safety Program.
 40-1403. Office of Bicycle Transportation and Safety.
 40-1404. District of Columbia Bicycle Advisory Council.

Subchapter II. Commercial Bicycle Operators.

- Sec.
 40-1411. Definitions.
 40-1412. Licensing; violations; identification numbers.
 40-1413. Courier company responsibility.
 40-1414. Enforcement.

Subchapter I. General Provisions.

Editor's notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 7-97, the preexisting text of this chapter, to

include §§ 40-1401 through 40-1404, has been designated as subchapter I of this chapter.

§ 40-1401. Findings.

The Council of the District of Columbia finds that:

(1) Increased use of bicycles for transportation and recreation will result in improved air quality, reduced levels of noise and traffic congestion, greater energy conservation, lower transportation costs, fewer parking problems, and increased physical fitness.

(2) Bicycle fatalities and accidents can be reduced through broad-based education and facilities improvements.

(3) The promotion of bicycle transportation and safety in the District of Columbia ("District") requires the implementation of a comprehensive bicycle transportation and safety program.

(4) A bicycle office is required to coordinate the comprehensive program. (Mar. 16, 1985, D.C. Law 5-179, § 2, 32 DCR 764.)

Legislative history of Law 5-179. — Law 5-179, "District of Columbia Comprehensive Bicycle Transportation and Safety Act of 1984," was introduced in Council and assigned Bill No. 5-474 which was referred to the Committee on Transportation and Environmental Affairs.

The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-244 and transmitted to both Houses of Congress for its review.

§ 40-1402. Comprehensive Bicycle Transportation and Safety Program.

(a) There shall be established in the District of Columbia a Comprehensive Bicycle Transportation and Safety Program to promote the safe and convenient use of the bicycle as a means of transportation and recreation.

(b) The scope of the program shall include, but not be limited to:

(1) Planning and supporting road improvements for bicyclists, such as wide curb lanes, smooth shoulders, bicyclist-oriented signs and signals, and removal of hazards;

(2) Improving access for bicyclists on the road network and on all modes of public transportation;

(3) Monitoring construction and repair projects to ensure that no additional hazards or obstacles to bicyclists are created as the transportation system is built or rebuilt;

(4) Assisting, organizing, and coordinating the planning, design, construction, improvement, repair, and maintenance of bicycle facilities, such as bicycle paths and bicycle lanes, both within and separate from the highway rights-of-way;

(5) Promoting the installation of secure and convenient bicycle parking facilities;

(6) Organizing safety education and training programs for young and adult bicyclists, as well as for motorists, to reduce bicycling accidents and foster safe use of bicycles; and

(7) Promoting effective traffic law enforcement to protect the rights of all road users and to encourage good bicycling habits. (Mar. 16, 1985, D.C. Law 5-179, § 3, 32 DCR 764.)

Legislative history of Law 5-179. — See note to § 40-1401.

§ 40-1403. Office of Bicycle Transportation and Safety.

There shall be established within the Office of the Director of the Department of Public Works an Office of Bicycle Transportation and Safety to promote the safe and convenient use of the bicycle as a means of transportation and recreation.

(1) The Office shall be headed by a bicycle coordinator who shall be a person with broad knowledge in all aspects of bicycle transportation and safety.

(2) The Office shall be staffed with a minimum of 2 full-time assistant bicycle coordinators who shall have appropriate experience and knowledge of bicycle matters.

(3) The duties of the bicycle coordinator shall include, but not be limited to:

(A) Administering the Comprehensive Bicycle Transportation and Safety Program;

(B) Serving as a contact for federal agencies, the press, civic organizations, and individuals on all matters related to bicycling;

(C) Establishing priorities and programming of bicycle facilities;

(D) Coordinating the District of Columbia's bicycle program with all agencies on matters relating to bicycles, including transportation, recreation, touring, sports and racing, physical fitness, and economic development;

(E) Assisting the Mayor of the District of Columbia ("Mayor"), the Director of the Department of Public Works, or a District agency in preparing budgetary, legislative, or regulatory proposals which may affect bicycling; and

(F) Evaluating and reporting annually to the Mayor and Director of the Department of Public Works on the District's bicycling programs and recommending any needed changes in these programs. (Mar. 16, 1985, D.C. Law 5-179, § 4, 32 DCR 764.)

Legislative history of Law 5-179. — See note to § 40-1401.

§ 40-1404. District of Columbia Bicycle Advisory Council.

(a) There is established a District of Columbia Bicycle Advisory Council (the "Council").

(b) The Council shall be composed of 18 members appointed as follows:

(1) One representative of the Department of Public Works, appointed by the Mayor;

(2) One representative of the Department of Recreation, appointed by the Mayor;

(3) One representative of the District of Columbia Energy Office, appointed by the Mayor;

(4) One representative of the Metropolitan Police Department, appointed by the Mayor;

(5) One representative of the Board of Education of the District of Columbia appointed by the President of the Board of Education; and

(6) Thirteen community representatives, with each member of the Council of the District of Columbia appointing 1 representative. Each of the community representatives shall be residents of the District with a demonstrated interest in bicycling. The representative appointed by the council member who chairs the committee having jurisdiction over bicycles shall serve as chairperson of the Council.

(c) The community members shall be appointed for a term of 3 years, with initial staggered appointments of 4 members appointed for 1 year, 5 members appointed for 2 years, and 4 members appointed for 3 years. The members to serve the 1-year term, the members to serve the 2-year term, and the members to serve the 3-year term shall be determined by lot at the 1st meeting of the Council.

(d) The purpose of the Council shall be to serve as the advisory body to the Mayor and District agencies on matters pertaining to bicycling in the District and to make recommendations to the bicycle coordinator on the budget and focus of the Comprehensive Bicycle Transportation and Safety Program. (Mar. 16, 1985, D.C. Law 5-179, § 5, 32 DCR 764.)

Legislative history of Law 5-179. — See note to § 40-1401.

Subchapter II. Commercial Bicycle Operators.

§ 40-1411. Definitions.

For purposes of this subchapter, the term:

(1) "Commercial bicycle operator" means an individual at least 16 years of age who receives financial compensation for the delivery or pick-up of goods or services by bicycle as a substantial part of his or her business or earnings, as defined by the Mayor in rules developed pursuant to § 40-1412(d)(3).

(2) "Courier company" means any firm, partnership, company, corporation, or organization operating within the District of Columbia that employs, compensates, utilizes, or contracts with a commercial bicycle operator.

(3) "Mayor" means the Mayor of the District of Columbia. (Mar. 29, 1988, D.C. Law 7-97, § 2, 35 DCR 1045.)

Legislative history of Law 7-97. — Law 7-97, "Commercial Bicycle Operators Licensing Act of 1987," was introduced in Council and assigned Bill No. 7-289, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on January 5, 1988 and January 19, 1988, respectively.

Signed by the Mayor on February 9, 1988, it was assigned Act No. 7-141 and transmitted to both Houses of Congress for its review.

Short title. — The first section of D.C. Law 7-97 provided: "That this act may be cited as the 'Commercial Bicycle Operators Licensing Act of 1987'."

§ 40-1412. Licensing; violations; identification numbers.

(a) Except as provided in subsection (e) of this section, no commercial bicycle operator shall operate within the District of Columbia without a license issued by the Mayor. A commercial bicycle operator shall pass a bicycle safety test developed by the Mayor in order to receive a commercial bicycle operator's license.

(b) It shall be a violation of this subchapter for a commercial bicycle operator licensed under this section to:

(1) Fail to pay a license fee not to exceed \$50 per year;

(2) Fail to carry a valid commercial bicycle operator's permit that shall include a photo identification listing the commercial bicycle operator's name, address, permit number, and any other information required by the Mayor pursuant to subsection (d)(3) of this section;

(3) Fail to display, in a manner visible from the rear, a valid commercial bicycle operator identification number issued by the Mayor pursuant to subsection (d) (2) of this section and, if employed by, compensated by, utilized by, or under contract to a courier company, the name and telephone number of the courier company, or if not employed by, compensated by, utilized by, or under contract to a courier company, the commercial bicycle operator's telephone number and address;

(4) Use a commercial bicycle operator's permit or identification number assigned to someone other than the commercial bicycle operator; or

(5) Violate any other requirement created by rule related to commercial bicycle operators.

(c) After notice and an opportunity to be heard, the commercial bicycle license shall not be renewed or shall be suspended or revoked upon the accumulation of a substantial number of bicycle traffic law violations and unpaid fines as determined by rules promulgated by the Mayor.

(d) The Mayor shall:

(1) Issue a commercial bicycle operator's permit to each commercial bicycle operator who has passed the required bicycle safety test and paid the license fee required under § 40-1412(b)(1);

(2) Issue commercial bicycle operator identification numbers upon request to courier companies and to commercial bicycle operators not employed by, compensated by, utilized by, or under contract to a courier company;

(3) Issue rules to implement the provisions of this subchapter pursuant to subchapter I of Chapter 15 of Title 1, within 120 days of March 29, 1988; and

(4) Develop a public education program to inform the public of the requirements of this subchapter.

(e) Commercial bicycle operators operating in the District of Columbia as of March 29, 1988 shall obtain a license from the Mayor within 180 days of March 29, 1988. (Mar. 29, 1988, D.C. Law 7-97, § 3, 35 DCR 1045.)

Section references. — This section is referred to in §§ 40-1411 and 40-1414.

Legislative history of Law 7-97. — See note to § 40-1411.

Delegation of authority pursuant to D.C. Law 7-97, "Commercial Bicycle Operators Licensing Act of 1987." — See Mayor's Order 88-174, July 29, 1988.

§ 40-1413. Courier company responsibility.

No courier company shall employ, compensate, utilize, or contract with a commercial bicycle operator who does not have a valid commercial bicycle operator's permit and a properly registered bicycle. (Mar. 29, 1988, D.C. Law 7-97, § 4, 35 DCR 1045.)

Legislative history of Law 7-97. — See note to § 40-1411.

§ 40-1414. Enforcement.

(a) The Mayor shall promulgate a schedule of civil fines not to exceed \$50 for violations of the provisions of this subchapter and rules promulgated pursuant to § 40-1412(d)(3).

(b) The proposed schedule of fines shall be submitted to the Council of the District of Columbia within 60 days of March 29, 1988 for approval, in whole or in part, by resolution. Nothing in this subchapter shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1. (Mar. 29, 1988, D.C. Law 7-97, § 5, 35 DCR 1045.)

Legislative history of Law 7-97. — See note to § 40-1411.

Approval of proposed schedule of fines. — Pursuant to Resolution 8-150, the "Commercial Bicycle Operators Licensing Act Schedule

of Fines Approval Resolution of 1989", effective November 21, 1989, the Council approved the proposed schedule of fines for violations of the provisions of the Commercial Bicycle Operators Licensing Act of 1987.

CHAPTER 15. DRIVER LICENSE COMPACT.

Sec.

40-1501. Adopted.

40-1502. Annual report; rules.

§ 40-1501. Adopted.

The Driver License Compact is adopted and entered into with all jurisdictions legally joining in it in the form substantially stated as follows:

ARTICLE I

Findings and Declaration of Policy

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles and their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefore more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II

Definitions

As used in this compact:

(a) "Conviction" means a conviction for any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

(b) "Compact administrator", when used with reference to the District of Columbia, means the Director of the Department of Public Works or his or her designee.

(c) "District" means the District of Columbia.

(d) "Executive head", when used with reference to the District of Columbia, means the Mayor of the District of Columbia or the Mayor's designated representative.

(e) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(f) "Licensing authority", when used with reference to the District of Columbia, means the Department of Public Works.

(g) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

ARTICLE III

Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV

Effect of Conviction

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the offense reported, pursuant to Article III of this compact, as it would if such offense had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used; and

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in death or personal injury.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the offense as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V

Application for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a conviction for a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a conviction for a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI

Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

ARTICLE VII

Compact Administrator and Interchange of Information

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his or her state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII

Entry Into Force and Withdrawal

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to remaining states and in full force and effect as to the state affected as to all severable matters. (Mar. 16, 1985, D.C. Law 5-184, § 2, 32 DCR 850.)

Legislative history of Law 5-184. — Law 5-184, “Driver License Compact Adoption Act of 1984,” was introduced in Council and assigned Bill No. 5-355, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and

second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-249 and transmitted to both Houses of Congress for its review.

§ 40-1502. Annual report; rules.

(a) By June 30th of each year, the Mayor shall submit to the Council of the District of Columbia a report that shall include, but not be limited, to the following:

(1) The number of reports of convictions received by the District of Columbia (“District”) from other states pursuant to this chapter;

(2) A brief description of the traffic violations upon which the convictions were based and the number of reports received for each violation;

(3) The number of revocations and suspensions issued by the District for each violation; and

(4) The number of reports of convictions sent to each state by the District pursuant to this chapter including a brief description of the traffic violations upon which the convictions were based and the number of reports issued for each violation.

(b) The Mayor shall issue rules to implement the provisions of this chapter pursuant to subchapter I of Chapter 15 of Title 1, and the rules shall at least govern what affect convictions in other states shall have in the District. (Mar. 16, 1985, D.C. Law 5-184, § 3, 32 DCR 850.)

Legislative history of Law 5-184. — See note to § 40-1501.

Delegation of authority pursuant to D.C. Law 5-184, “Driver License Compact Adop-

tion Act of 1984.” — See Mayor’s Order 88-63, March 15, 1988.

Editor’s notes. — The word “affect” in subsection (b) probably should be “effect”.

CHAPTER 16. MANDATORY USE OF SEAT BELTS.

Sec.

40-1601. Definitions.

40-1602. Use of safety belts required; exceptions.

40-1603. Standards for safety belts.

40-1604. Application of chapter.

Sec.

40-1605. Public education regarding chapter.

40-1606. Enforcement of chapter.

40-1607. Evidentiary value of violation or compliance.

§ 40-1601. Definitions.

For the purposes of this chapter, the term:

(1) "Motor vehicle" means an automotive transportation device with more than 3 wheels and a seating capacity of 8 or less passengers, not including the driver, but the term does not include vehicles used for farm purposes.

(2) "Properly restrained" means strapped around the waist or the torso of a passenger by a safety belt built into the motor vehicle. (Dec. 12, 1985, D.C. Law 6-73, § 2, 32 DCR 6344.)

Legislative history of Law 6-73. — Law 6-73, "Mandatory Use of Seat Belts Act of 1985," was introduced in Council and assigned Bill No. 6-16, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on September 24, 1985, and October 8, 1985, respectively. Signed by the Mayor on October 18, 1985, it was assigned Act No. 6-97 and transmitted to both Houses of Congress for its review.

Expiration of Law 6-73. — Section 9(b) of D.C. Law 6-73 provided that the act shall

expire immediately upon the date that the Secretary of the United States Department of Transportation, or his or her designee, determines to rescind the portion of standard 208 of the Federal Motor Vehicle Safety, promulgated December 25, 1968 (33 Fed. R. 19703; 49 CFR part 571.208), which requires the installation of automatic restraints in new private passenger motor vehicles, unless the secretary's decision to rescind standard 208 is not based on the enactment or the continued operation of the act.

§ 40-1602. Use of safety belts required; exceptions.

(a) Except as provided in Chapter 12 of this title, the driver and all passengers in a motor vehicle shall wear a properly adjusted and fastened safety belt while the driver is in control of the vehicle.

(b) This section does not apply to operators or passengers under the following circumstances:

(1) Riders in a motor vehicle manufactured before July 1, 1966;

(2) Riders who possess a written verification from a licensed physician that the rider is unable to wear a safety belt for medical reasons; or

(3) Riders who are passengers in a vehicle if all seating positions with seat belts in the vehicle are occupied by other persons. The driver shall insure that children 16 years of age and under have preference to seating positions with seat belts over persons more than 16 years of age. (Dec. 12, 1985, D.C. Law 6-73, § 3, 32 DCR 6344; Mar. 7, 1992, D.C. Law 9-57, § 3, 38 DCR 7283; Apr. 9, 1997, D.C. Law 11-244, § 2(a), 44 DCR 1155.)

Effect of amendments. — D.C. Law 9-57 in (a), deleted "for children less than 6 years old", following "Except as provided".

D.C. Law 11-244 rewrote (a) and added (b)(3).

Legislative history of Law 6-73. — See note to § 40-1601.

Legislative history of Law 9-57. — Law 9-57, the "Child Restraint Act of 1982 Amend-

ment Act of 1991," was introduced in Council and assigned Bill No. 9-100, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-100 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-244. — Law 11-244, the "Mandatory Use of Seat Belts Amendment Act of 1996," was introduced in

Council and assigned Bill No. 11-693, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-504 and transmitted to both Houses of Congress for its review. D.C. Law 11-244 became effective on April 9, 1997.

Expiration of Law 6-73. — See note to § 40-1601.

§ 40-1603. Standards for safety belts.

Safety belts shall conform to applicable federal motor vehicle safety standards established pursuant to § 103 of title 1 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. § 1392). (Dec. 12, 1985, D.C. Law 6-73, § 4, 32 DCR 6344.)

Legislative history of Law 6-73. — See note to § 40-1601.

Expiration of Law 6-73. — See note to § 40-1601.

References in text. — 15 U.S.C. § 1392, referred to in this section, was repealed in 1994 by P.L. 103-272, § 7(b). For present law, see 49 U.S.C. § 30101 et seq.

§ 40-1604. Application of chapter.

This chapter shall apply to drivers operating a motor vehicle in the District of Columbia and their passengers. (Dec. 12, 1985, D.C. Law 6-73, § 5, 32 DCR 6344.)

Legislative history of Law 6-73. — See note to § 40-1601.

Expiration of Law 6-73. — See note to § 40-1601.

§ 40-1605. Public education regarding chapter.

For the first 6 months after April 9, 1997, the Mayor of the District of Columbia shall educate the public about the requirements and the purpose of the Mandatory Use of Seat Belts Amendment Act of 1996. The efforts to educate the public shall be multi-lingual and in alternative formats. (Dec. 12, 1985, D.C. Law 6-73, § 6, 32 DCR 6344; Apr. 9, 1997, D.C. Law 11-244, § 2(b), 44 DCR 1155.)

Effect of amendments. — D.C. Law 11-244 rewrote this section.

Legislative history of Law 6-73. — See note to § 40-1601.

Legislative history of Law 11-244. — See note to § 40-1602.

Expiration of Law 6-73. — See note to § 40-1601.

§ 40-1606. Enforcement of chapter.

(a) There shall not be penalties for violating the Mandatory Use of Seat Belts Amendment Act of 1996 during the first 6 months after December 12, 1985. Instead, the Mayor of the District of Columbia shall issue warnings to drivers and passengers who violate the Mandatory Use of Seat Belts Amendment Act of 1996 during those 6 months.

(b)(1) The penalties provisions in paragraph (2) of this subsection and subsection (d) of this section shall not be enforced until 6 months after the effective date of the Mandatory Use of Seat Belts Amendment Act of 1996. The Mayor shall issue rules consistent with the purpose and regulatory scheme created by this chapter. The Mayor shall issue the rules pursuant to title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1203; D.C. Code § 1-1501 et seq).

(2) The penalty imposed by the Mayor for violating this chapter shall be \$50, although the Mayor may subsequently increase the amount of the penalty.

(c) Repealed.

(d) The Department of Public Works shall assign 2 points pursuant to 18 DCMR 303 to the driving record of a driver found in violation of this chapter.

(e) Violations of this chapter shall be civil infractions.

(f) The driver of the vehicle, except operators of passenger vehicles for hire, shall be responsible for ensuring that passengers comply with this chapter. (Dec. 12, 1985, D.C. Law 6-73, § 7, 32 DCR 6344; Apr. 9, 1997, D.C. Law 11-244, § 2(c), 44 DCR 1155.)

Effect of amendments. — Section 2(c) of D.C. Law 11-244 substituted “the Mandatory Use of Seat Belts Amendment Act of 1996” for “this chapter” in two places in (a); rewrote (b)(1) and (2); repealed (c); and rewrote (d) and (f).

Legislative history of Law 6-73. — See note to § 40-1601.

Legislative history of Law 11-244. — See note to § 40-1602.

References in text. — The “Mandatory Use of Seat Belts Amendment Act of 1996,” referred to in (a), is codified as §§ 40-1602, 40-1605, and 40-1606.

Expiration of Law 6-73. — See note to § 40-1601.

Delegation of authority pursuant to Law 6-73. — See Mayor’s Order 86-138, August 19, 1986.

§ 40-1607. Evidentiary value of violation or compliance.

Neither a violation of this chapter nor compliance with its terms shall constitute evidence of negligence, evidence of contributory negligence, or a basis for a civil action for damages. Also, a violation or compliance with this chapter shall not be used as a basis for mitigating damages arising from a civil liability. (Dec. 12, 1985, D.C. Law 6-73, § 8, 32 DCR 6344.)

Legislative history of Law 6-73. — See note to § 40-1601.

Expiration of Law 6-73. — See note to § 40-1601.

CHAPTER 17. REGULATION OF TAXICABS.

Sec.	Sec.
40-1701. Findings.	40-1710. Internal and procedural rules.
40-1702. Purposes.	40-1711. Full Commission meetings; annual report.
40-1703. Definitions.	40-1712. Office of Taxicabs established.
40-1704. District of Columbia Taxicab Commission — Established.	40-1713. Regulation of passenger vehicles for hire.
40-1705. Same — Membership; appointment; terms; chairperson.	40-1714. Insurance.
40-1706. Same — Organization.	40-1715. Sinking funds; blanket policies.
40-1707. Duties of Commission; jurisdiction, powers, and duties of Commission panels.	40-1716. Reporting by Commissioner.
40-1708. Panel on Rates and Rules; quorum; rule and ratemaking requirements.	40-1717. Rate proceeding; standard for rate structure.
40-1709. Panel on Consumer and Industry Concerns; quorum; adjudication and rulemaking requirements.	40-1718. Existing taxi regulations.
40-1709.1. [Repealed].	40-1719. License requirement.
40-1709.2. Hearing examiner — appointment, powers, and duties; appeals.	40-1720. District of Columbia Taxicab Commission Fund; established.
	40-1721. Impoundment of a taxicab and passenger vehicle for hire.
	40-1722. Enforcement and issuance of citations; report.

§ 40-1701. Findings.

The Council of the District of Columbia (“Council”) finds that:

(1) Passenger transportation by taxicab is an integral and important component of public transit within the District.

(2) The business of transporting passengers and baggage for hire by taxicab is charged with an important public interest requiring governmental supervision, regulation, and control.

(3) Governmental regulation of the taxi industry in the District has been and is presently marked by a fragmented, decentralized, and uncoordinated system of regulation involving no less than 7 different administrative offices, in addition to the Public Service Commission, the Mayor, and the Council.

(4) Considering the importance of the taxi industry to public transportation within the District, there should be established a centralized regulatory mechanism for the furtherance of coherent, efficient, and enforceable regulation, and for the establishment of sound taxi transportation policy.

(5) Recommendations have been made over the course of several decades by various private and commissioned studies, task forces, public and private groups, individuals, and Congressional committees and subcommittees urging regulatory reform of the taxicab industry and the creation and consolidation of regulation into a single agency or bureau.

(6) Based upon the consistency of recommendations made over the years relating to regulatory reform of the system of taxi supervision, and based upon the Council’s own evaluation of the present structure of governmental regulation, the Council finds that regulatory consolidation is in the public interest.

(7) The taxicab industry within the District, although impressed with certain characteristics of a public utility, is nonetheless wholly comprised of thousands of individual licensees conducting business on a self-employment basis.

(8) In view of the individual licensee nature of the structure and organization of the District of Columbia taxicab industry, the Council considers it inefficient and against the public interest to continue regulation of the industry under a statutory scheme, and by an agency of government more efficiently fitted to the regulation of franchised monopoly utilities, and, because of the Public Service Commission's ever increasing regulatory burden with respect to monopoly utilities, considers a transfer of its jurisdiction over taxicabs in the public interest. (Mar. 25, 1986, D.C. Law 6-97, § 2, 33 DCR 703.)

Legislative history of Law 6-97. — Law 6-97, "District of Columbia Taxicab Commission Establishment Act of 1985," was introduced in Council and assigned Bill No. 6-159, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on December 17, 1985, and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-125 and transmitted to both Houses of Congress for its review.

Cited in *Gebremariam v. District of Columbia Hackers' License Appeal Bd.*, App. D.C., 533 A.2d 909 (1987); *Communication Workers, Local 2336 v. District of Columbia Taxicab Comm'n*, App. D.C., 542 A.2d 1221 (1988); *Onabiyi v. District of Columbia Taxicab Comm'n*, App. D.C., 557 A.2d 1317 (1989); *Lim v. District of Columbia Taxicab Comm'n*, App. D.C., 564 A.2d 720 (1989).

§ 40-1702. Purposes.

(a) In enacting this chapter, the Council of the District of Columbia supports the following statutory purposes:

(1) To promote the public interest in taxicab transportation by insuring that all rules, regulations, and laws specifically relating to taxicabs be vigorously and fairly enforced; that discrimination in taxicab passenger service be strictly proscribed and penalized; and that adequate and high quality taxi passenger service be provided to all quadrants and neighborhoods of the District;

(2) To promote and maintain a healthy and viable taxicab industry;

(3) To maintain a taxicab transportation system which provides owners and operators of taxicabs with reasonable and just compensation for their services, and which is reasonably priced and readily accessible in cost to a broad cross section of the public; and

(4) To promote and maintain policies which:

(A) Encourage professionalism in the industry;

(B) Assure the licensure of competent and knowledgeable operators;

(C) Assure the licensure of companies and associations which render adequate and professional public service;

(D) Permit, as a result of economic feasibility and incentive, the utilization of efficient, comfortable, and current transportation equipment and technology;

(E) Utilize and promote efficient methods of taxicab passenger transportation;

(F) Foster good will and a cooperative spirit among the taxicab industry, the government, and the public; and

(G) Promote policies of energy conservation and the reduction of pollution and traffic congestion.

(b)(1) The District also determines it a matter of public policy to:

(A) Promote and encourage the meaningful participation of minorities and District residents in the District's taxi industry;

(B) Promote and encourage a healthy degree of competition within the taxi industry between taxicab companies and associations; and

(C) Assure access to the ownership of taxicabs by taxicab operators.

(2) In keeping with the policies set forth in paragraph (1) of this subsection, the Commission shall:

(A) In exercising the authority vested in it by this chapter, and in its formulation of policy and programs, encourage and promote meaningful participation of District residents and minorities, as the term minority is defined in § 1-1142 (1), in the ownership and operation of taxicabs, taxicab companies, and taxicab associations;

(B) Encourage a healthy degree of competition within the taxi industry between taxicab companies and associations, and shall discourage the monopolization of the taxicab industry; and

(C) Issue rules and establish policies which shall assure taxicab operators continued access to the ownership of taxicabs. (Mar. 25, 1986, D.C. Law 6-97, § 3, 33 DCR 703.)

Legislative history of Law 6-97. — See note to § 40-1701.

§ 40-1703. Definitions.

For the purpose of this chapter, the term:

(1) "Capital City Plan" means the formal alphabetical and numerical pattern and layout of streets within the District's 4 quadrants, the formal pattern and layout of avenues and circles within the District, and the formal system and pattern of addresses within the District.

(2) "Chief" means the Chief of the Office of Taxicabs established by § 40-1712.

(3) "Commission" means the District of Columbia Taxicab Commission established by § 40-1704.

(3A) "Commissioner" means the Commissioner of Insurance and Securities.

(4) "District" means the District of Columbia.

(5) "Office" means the Office of Taxicabs established by § 40-1712.

(6) "Passenger vehicle for hire" means:

(A) Any motor vehicle for hire operated in the District by a private concern or individual as an ambulance, funeral car, sightseeing vehicle, or vehicle used exclusively for contract livery services or for which the rate is fixed solely by the hour;

(B) Any motor vehicle for hire operated exclusively within the District between fixed termini or on a schedule, exclusive of vehicles operated by the Washington Metropolitan Area Transit Authority or other public authorities; or

(C) Any other private motor vehicle for hire not operated on a schedule or between fixed termini and operated exclusively in the District, exclusive of taxicabs.

(7) Repealed.

(8) "Taxi or taxicab" means any passenger vehicle for hire having a seating capacity of 8 or less passengers, exclusive of the driver, and operated as a vehicle for passenger transportation for hire by taxicab.

(9) "Taxicab association" means a group of taxicab owners organized for the purpose of engaging in the business of taxicab transportation for common benefits regarding operation, color scheme, or insignia.

(10) "Taxi or taxicab company" means any person, partnership, or corporation engaging in the business of owning and operating a fleet or fleets of taxicabs having a uniform color scheme.

(11) "Taxi or taxicab fleet" means a group of 20 or more taxicabs having a uniform color scheme and having unified control by ownership or by association.

(12) "Taxicab industry" means all taxicab companies, associations, owners, and operators, or any person who by virtue of employment or office is directly involved in the provision of taxicab services within the District.

(13) "Taxi or taxicab operator" means any person operating or licensed to operate a taxicab for hire in the District of Columbia.

(14) "Taxi or taxicab owner" means any person, corporation, partnership, or association which holds the legal title to a taxicab the registration of which is required in the District of Columbia. If a taxicab is the subject of an agreement for the conditional sale or lease with the right of purchase upon performance of the condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a taxicab is entitled to possession, then the conditional vendee, lessee, or mortgagor shall be considered the owner for the purpose of this chapter.

(15) "Taxicab rate structure" means the rates, fares, charges, and methodologies used to determine the price of taxicab service.

(16) "Taxicab service" means passenger transportation service originating in the District in which the passenger directs the points between which the service is to be provided, and which is provided at a time chosen by the passenger, and the charge for which bears some relation to distance travelled. (Mar. 25, 1986, D.C. Law 6-97, § 4, 33 DCR 703; Feb. 24, 1987, D.C. Law 6-165, § 3(a), 33 DCR 6705; May 21, 1997, D.C. Law 11-268, § 10(ii)(1), 44 DCR.)

Section references. — This section is referred to in § 40-703.

Effect of amendments. — D.C. Law 11-268 inserted (3A) and repealed (7).

Legislative history of Law 6-97. — See note to § 40-1701.

Legislative history of Law 6-165. — Law 6-165 was introduced in Council and assigned Bill No. 6-334, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on July 8, 1986 and September 23, 1986, respectively. Signed by the

Mayor on October 9, 1986, it was assigned Act No. 6-211 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-268. — Law 11-268, the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December

30, 1996, it was assigned Act No. 11-524 and review. D.C. Law 11-268 became effective on transmitted to both Houses of Congress for its May 21, 1997.

§ 40-1704. District of Columbia Taxicab Commission — Established.

There is established the District of Columbia Taxicab Commission as a subordinate agency within the executive branch of the District government with exclusive authority for intrastate regulation of the taxicab industry as provided herein. (Mar. 25, 1986, D.C. Law 6-97, § 5, 33 DCR 703.)

Section references. — This section is referred to in § 40-1703.

Legislative history of Law 6-97. — See note to § 40-1701.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Jurisdiction. — Taxicab Commission had

jurisdiction to hear case involving a violation of reciprocity agreement with Virginia. *Lim v. District of Columbia Taxicab Comm'n*, App. D.C., 564 A.2d 720 (1989).

Cited in *Onabiyi v. District of Columbia Taxicab Comm'n*, App. D.C., 557 A.2d 1317 (1989); *Boston Coach-Washington v. District of Columbia Taxicab Comm'n*, 930 F. Supp. 649 (D.D.C. 1996).

§ 40-1705. Same — Membership; appointment; terms; chairperson.

(a) The Commission shall consist of 9 members. Five of the members, who shall be public members, shall be appointed by the Mayor with the advice and consent of the Council, and shall be drawn from the public at large. Three of the members, who shall be industry members, shall be appointed by the Mayor with the advice and consent of the Council, and shall have experience in taxicab industry operations in the District. The remaining member of the Commission shall be appointed by the Mayor with advice and consent of the Council and shall serve as chairperson of the Commission. The chairperson shall have experience in the field of transportation administration or regulation. A nominee for member or chairperson shall be considered confirmed by the Council on the 90th day after the Mayor submits the nominee for Council consideration unless the Council confirms the nomination earlier or unless, within that time, the Council disapproves the nomination by resolution. The Mayor shall designate a public member to serve as chairperson when the office of the chairperson is vacant and until a successor has been appointed.

(b) All members of the Commission, except for the chairperson who shall serve at the pleasure of the Mayor, shall be appointed for terms of 5 years.

(c) Each member shall serve until the appointment and qualification of a successor. No member shall serve more than 2 consecutive terms, which shall not include an appointment to fill a vacancy due to removal, resignation, or death of a member. The Mayor may remove any member for cause, except for the chairperson who shall serve at the pleasure of the Mayor. An appointment to fill a vacancy occurring during a term due to removal, resignation or death of a member shall be made in the same manner as other appointments and for the remainder of the unexpired term. Public and industry members shall be entitled to compensation pursuant to § 1-612.8(b).

(d) Pursuant to §§ 1-604.6 and 1-610.1 through 1-610.8, the chairperson of the Commission shall be its chief administrative officer and shall have charge of the organization of the Commission and its panels, and shall superintend the duties of the Chief of the Office in carrying out the purposes and provisions of this chapter. The chairperson shall be a public officer of the District who shall devote full time to the affairs of the Commission, and shall receive compensation commensurate with his or her duties and responsibilities established by this chapter. The salary of the chairperson shall be determined by the Mayor. (Mar. 25, 1986, D.C. Law 6-97, § 6, 33 DCR 703; Feb. 24, 1987, D.C. Law 6-165, § 3(b), 33 DCR 6705; Oct. 7, 1987, D.C. Law 7-31, § 7, 34 DCR 3789; Apr. 9, 1997, D.C. Law 11-198, § 501(a), 43 DCR 4569.)

Effect of amendments. — D.C. Law 11-198 rewrote (a) and (b).

Temporary amendment of section. — Section 501(a) of D.C. Law 11-226 rewrote (a) and (b).

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal Year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 501(a) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 501(a) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 501(a) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 11-302 provides for application of the act.

Section 1001 of D.C. Act 11-429 provides for application of the act.

Section 1001 of D.C. Act 12-2 provides for application of the act.

Legislative history of Law 6-97. — See note to § 40-1701.

Legislative history of Law 6-165. — See note to § 40-1703.

Legislative history of Law 7-31. — Law 7-31 was introduced in Council and assigned Bill No. 7-139, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 14, 1987 and May 5, 1987, respectively. Signed by the Mayor on June 1, 1987, it was assigned Act No. 7-26 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-198. — Law 11-198, the "Fiscal Year 1997 Budget Support Act of 1996," was introduced in Council and

assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective April 9, 1997.

Legislative history of Law 11-226. — Law 11-226, the "Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-896. The Bill was adopted on first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on December 4, 1996, it was assigned Act No. 11-453 and transmitted to both Houses of Congress for its review. D.C. Law 11-226 became effective on April 9, 1997.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Application of Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Mayor authorized to appoint Commission prior to effective date. — Section 24(c) of D.C. Law 6-97 provided that prior to the effective date specified in § 24(b) (1 year after March 25, 1986), the Mayor is authorized to appoint the members and chairperson of the Commission. Upon confirmation, the chairperson is authorized to appoint the Chief and approve the hiring of the staff of the Office. Following confirmation of a majority of their members, the Commission panels are authorized to issue internal operating procedures and otherwise organize the Commission in preparation for the performance of duties under the act.

§ 40-1706. Same — Organization.

(a) The Commission shall be organized into 2 panels, the members each of which shall be determined by the Mayor.

(b) There shall be a Panel on Rates and Rules which shall consist of the chairperson, 3 public members, and 1 industry member.

(c) There shall be a Panel on Consumer and Industry Concerns which shall consist of the chairperson, 2 public members, and 2 industry members.

(d) Each panel shall exercise, exclusive of the other, the power, authority, and duties vested in it pursuant to § 40-1707. Except as provided in § 40-1708 (c), all acts and orders of a panel shall be an act or order of the Commission. (Mar. 25, 1986, D.C. Law 6-97, § 7, 33 DCR 703; May 10, 1988, D.C. Law 7-109, § 2(a), 35 DCR 2181; Apr. 9, 1997, D.C. Law 11-198, § 501(b), 43 DCR 4569.)

Effect of amendments. — D.C. Law 11-198 rewrote (c).

Temporary amendment of section. — Section 501(b) of D.C. Law 11-226 rewrote (c).

Section 1001 of D.C. Law 11-226 provides that Titles I, II, III, V, and VI of the act shall apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal Year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 501(b) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181, § 501(b) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151, and § 501(b) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 11-302 provides for application of the act.

Section 1001 of D.C. Act 11-429 provides for application of the act.

Section 1001 of D.C. Act 12-2 provides for application of the act.

Legislative history of Law 6-97. — See note to § 40-1701.

Legislative history of Law 7-109. — Law 7-109 was introduced in Council and assigned Bill No. 7-377, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on February 16, 1988 and March 1, 1988, respectively. Signed by the Mayor on March 16, 1988, it was assigned Act No. 7-151 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-198. — See note to § 40-1705.

Legislative history of Law 11-226. — See note to § 40-1705.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Short title. — See note to § 40-1701.

Application of Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Designation of District of Columbia Taxicab Commission Panel on Rates and Rules and Panel on Consumer and Industry Concerns. — See Mayor's Order 97-64, April 2, 1997 (44 DCR 2176).

§ 40-1707. Duties of Commission; jurisdiction, powers, and duties of Commission panels.

(a) The Commission is charged with the responsibility for the continuance, further development, and improvement of taxicab passenger service within the District, and the overall regulation of taxicabs, taxicab companies, and taxicab associations.

(b) The responsibility of the Commission specified in subsection (a) of this section shall be effected as follows:

(1) The Commission's Panel on Rates and Rules shall have original jurisdiction, power, and duty to:

(A) Establish reasonable rates for taxicab service for the transportation of passengers and their property within the District, including all charges incidental and directly related to the provision of taxicab services;

(B) Establish methodologies for the determination of reasonable fares for taxicab service, including, but not limited to, revision of the zone boundaries and zone construct currently employed to determine taxicab fares. The Commission's Panel on Rates and Rules shall neither impose any limitation on the number of taxicabs that may operate in the District, nor shall it authorize a metered system for determining taxicab fares without a 60-day period of Council review of the proposal;

(C) Establish criteria, standards, and requirements for taxicab vehicle licensing;

(D) Establish criteria, standards, and requirements for the licensing of taxicab owners, operators, taxicab companies, associations, and fleets, including the setting of reasonable license fees;

(E) Establish standards, conditions, and requirements of taxicab service;

(F) Establish standards for driver and passenger safety;

(G) Establish standards and requirements relating to equipment and equipment design;

(H) In situations of public emergency or because of extraordinary circumstances affecting the taxi industry, regulate the rates charged for the lease of taxicabs by taxicab companies, associations, and fleets where considered necessary to protect the public interest;

(I) Establish reasonable civil fines and penalties for violations of rules issued by the Commission, or orders issued by the Commission, including penalties consisting of license suspension and revocation;

(J) Establish any rule relating to the regulation and supervision of the taxicab industry not specifically delineated in this chapter, so long as the rule is consistent with this chapter, is reasonable, is related to the furtherance and protection of the public interest in taxi transportation, and is not within the rulemaking authority vested in the Panel on Consumer and Industry Concerns;

(K) Advise agencies and authorities of government having jurisdiction over public transportation or public highways and space within the District regarding the routing of taxicabs and the location of taxicab stands within the District; and

(L) Advise the Mayor regarding the entering, modifying, and terminating of reciprocal agreements respecting taxicabs with governmental bodies in the Washington metropolitan area.

(2) The Commission's Panel on Adjudication shall have the jurisdiction, power, and duty to:

(A) Adjudicate all complaints lodged in the Office against taxicab operators, companies, associations, fleets, and taxi dispatch services by consumers and officials or employees of government involved in taxicab enforcement or administration;

(B) When the panel determines that it is necessary to protect the public interest, adjudicate intraindustry complaints and disputes occurring in the

taxi industry, including, but not limited to, complaints and disputes between companies, associations, companies and associations, operators or owners, and operators or owners and companies or associations; and, on the basis of industry-wide problems coming to light by virtue of adjudication, issue reasonable rules after notice and comment for the governance of intraindustry relationships where considered necessary to protect the public interest. For purposes of this subsection, the power to issue rules for the governance of intraindustry relationships shall mean the power to regulate the responsibilities of 1 component of the taxi industry to another, and does not comprehend the power to regulate the responsibility of any component of the industry to the public. The power to regulate the public responsibility of the taxi industry and its components is vested in the Panel on Rates and Rules pursuant to subsection (b) (1) of this section;

(C) Hear and decide appeals taken from license denials and proposed revocations or suspensions issued by the Office of Taxicabs established by § 40-1712;

(D) Hear and decide upon complaints and appeals taken from any order, act, practice, or policy implemented by the Office relating to the taxicab industry; and

(E) Repealed.

(F) Undertake the investigation of any aspect of taxicab operations and practices, and to make a report and recommendation to the Panel on Rates and Rules or issue any reasonable rule if the subject of the investigation concerns a matter relevant to the rulemaking authority vested in the panel by subparagraph (B) of this paragraph;

(G) Repealed.

(H) Repealed.

(3) The Commission's Panel on Adjudication shall have the jurisdiction, power, and discretion to consider appeals taken from any act, decision, or order of a 3-member component of the Panel on Adjudication that exercises adjudicatory functions, as determined by a majority of the Panel on Adjudication.

(c) Except as provided in § 40-1708(c), each panel of the Commission is empowered to issue orders which shall have binding effect in exercising any authority conferred by this section. (Mar. 25, 1986, D.C. Law 6-97, § 8, 33 DCR 703; May 10, 1988, D.C. Law 7-109, § 2(b), 35 DCR 2181; Jan. 30, 1990, D.C. Law 8-59, § 2(a), 36 DCR 7384; May 1, 1990, D.C. Law 8-107, § 2(a), 37 DCR 1623; Apr. 9, 1997, D.C. Law 11-198, § 501(c), 43 DCR 4569.)

Section references. — This section is referred to in §§ 40-1706, 40-1708, 40-1709 and 40-1710.

Temporary amendment of section. — Section 501(c) of D.C. Law 11-226 substituted "Panel on Consumer and Industry Concerns" for "Panel on Adjudication" in (b)(1)(J) and in the introductory language of (b)(2); and repealed (b)(2)(E) and (G).

Section 1001 of D.C. Law 11-226 provides that Titles I, II, III, V, and VI of the act shall apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 501(c) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 501(c) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996,

43 DCR 6151), and § 501(c) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 11-302 provides for application of the act.

Section 1001 of D.C. Act 11-429 provides for application of the act.

Section 1001 of D.C. Act 12-2 provides for application of the act.

Legislative history of Law 6-97. — See note to § 40-1701.

Legislative history of Law 7-109. — See note to § 40-1706.

Legislative history of Law 8-59. — See note to § 40-1709.

Legislative history of Law 8-107. — Law 8-107 was introduced in Council and assigned Bill No. 8-342, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on January 30, 1990, and February 13, 1990, respectively. Signed by the Mayor on February 28, 1990, it was assigned Act No. 8-161 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-198. — See note to § 40-1705.

Legislative history of Law 11-226. — See note to § 40-1705.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Application of Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Hacker's License Appeal Board abolished. — Section 23(a) of D.C. Law 6-97 provided that the Hacker's License Appeal Board established by Commissioners' Order 68-59, effective August 15, 1968, is abolished. Section 23(b) of D.C. Law 6-97 provided that the Commission shall be the successor to the Board and any complaint, proceeding, or matter pending before the Board on the effective date of this section shall be a complaint, proceeding, or matter of the Commission. Section 24(b) of D.C. Law 6-97 provided that §§ 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Inadequacy of administrative remedy. — Where plaintiffs sued taxicab company alleging that company's drivers refused to serve black customers in violation of § 42 U.S.C. § 1981, inadequacy of administrative remedy permitted plaintiffs to sue immediately in federal district court without initiating proceedings before the taxicab commission. *Floyd-Mayers v. American Cab Co.*, 732 F. Supp. 243 (D.D.C. 1990).

Enforcement of unlicensed hacking laws. — The District of Columbia Taxicab Commission, rather than the Bureau of Traffic Adjudication, was intended to be the agency charged with enforcing laws prohibiting unlicensed hacking. *Onabiyi v. District of Columbia Taxicab Comm'n*, App. D.C., 557 A.2d 1317 (1989).

Review of orders. — An emergency order of the Taxicab Commission increasing rates is not a contested case so as to be subject to direct review. *Communication Workers, Local 2336 v. District of Columbia Taxicab Comm'n*, App. D.C., 542 A.2d 1221 (1988).

§ 40-1708. Panel on Rates and Rules; quorum; rule and ratemaking requirements.

(a) A majority of the qualified members of the Panel on Rates and Rules shall constitute a quorum for the transaction of business, but public hearings may be conducted without the presence of a quorum. The chairperson or his or her designee shall preside over all proceedings of the panel, and may appoint a member to preside over public hearings.

(b) In exercising the rulemaking and ratemaking authority vested in the Panel on Rates and Rules by § 40-1707, the Panel on Rates and Rules shall adhere to and be subject to the requirements of subchapter I of Chapter 15 of Title 1, which provisions shall apply to the Panel on Rates and Rules as an agency of government. The Panel on Rates and Rules shall, in giving notice of intended action under § 1-1506, afford interested persons an opportunity to submit views and data orally during a public hearing, for which adequate notice has been given as required by rules of the panel. In exercising its rulemaking and ratemaking authority, the Panel on Rates and Rules shall have 45 days, excluding Saturdays, Sundays, and legal holidays, to act upon rulemaking and ratemaking matters after a majority of the full Commission

has voted to require the panel to take action on proposed rules or rates. Rulemaking and ratemaking matters that are not acted upon by the panel within the time specified in this subsection may be acted upon by the full Commission.

(c) No rule or rate shall be effective unless a majority of the full Commission has voted affirmatively for the adoption of the rule or rate, and no proxy by a member shall be allowed. (Mar. 25, 1986, D.C. Law 6-97, § 9, 33 DCR 703; May 10, 1988, D.C. Law 7-109, § 2(c), 35 DCR 2181; Sept. 22, 1994, D.C. Law 10-171, § 2(a), 41 DCR 5149.)

Section references. — This section is referred to in §§ 40-1706 and 40-1707.

Legislative history of Law 6-97. — See note to § 40-1701.

Legislative history of Law 7-109. — See note to § 40-1706.

Legislative history of Law 10-171. — Law 10-171, the “District of Columbia Taxicab Commission Establishment Act of 1985 Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-538, which was referred to the Committee on Public Services and Youth Affairs. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July

25, 1994, it was assigned Act No. 10-291 and transmitted to both Houses of Congress for its review. D.C. Law 10-171 became effective on September 22, 1994.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Review of orders. — An emergency order of the Taxicab Commission increasing rates is not a contested case so as to be subject to direct review. *Communication Workers, Local 2336 v. District of Columbia Taxicab Comm’n*, App. D.C., 542 A.2d 1221 (1988).

§ 40-1709. Panel on Consumer and Industry Concerns; quorum; adjudication and rulemaking requirements.

(a) Except as provided in this section, a majority of the qualified members of the Panel on Consumer and Industry Concerns shall constitute a quorum for the transaction of business. The chairperson, or his or her designee, shall preside over all proceedings of the panel.

(b) The panel shall act in 3-member components in exercising the adjudicatory functions vested in it by § 40-1707. The membership of an adjudicatory component of the panel shall consist of 2 public representatives and 1 industry representative as determined by the chairperson. The chairperson shall regularly rotate the service of panel members on the components pursuant to an established schedule. The chairperson may, when deemed appropriate, call any member of the Commission to serve on a 3-member component of the Panel on Consumer and Industry Concerns. The chairperson or his or her designee shall preside over the proceedings of the components, but shall not vote on the case or matter under adjudication. Decisions in adjudicatory cases shall be made by a majority of the component, exclusive of the presiding officer, and shall be the decision of the panel upon issuance and order.

(c) The panel, in exercising the adjudicatory and rulemaking authority vested in it by § 40-1707, shall adhere to the requirements of subchapter I of Chapter 15 of Title 1, the provisions of which shall apply to the panel as an agency of government.

(d) No rule issued pursuant to § 40-1707(b)(2)(B) shall be effective unless a majority of the qualified members of the Panel on Consumer and Industry

Concerns has voted affirmatively for the adoption of the rule, and no proxy by a member shall be allowed.

(e) Appeals from decisions of a 3-member component of the panel shall be considered in accordance with § 40-1707(b)(3). For the purposes of subchapter I of Chapter 15 of Title 1, an order of a 3-member component of the panel that is appealed to the Panel on Consumer and Industry Concerns shall not be considered final pending the consideration of the appeal by the Panel. (Mar. 25, 1986, D.C. Law 6-97, § 10, 33 DCR 703; May 10, 1988, D.C. Law 7-109, § 2(d), (e), 35 DCR 2181; May 1, 1990, D.C. Law 8-107, § 2(b), 37 DCR 1623; Sept. 22, 1994, D.C. Law 10-171, § 2(b), 41 DCR 5149; Apr. 9, 1997, D.C. Law 11-198, § 501(d), 43 DCR 4569.)

Effect of amendments. — D.C. Law 11-198 substituted “Panel on Consumer and Industry Concerns” for “Panel on Adjudication” throughout the section.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Temporary amendment of section. — Section 501(d) of D.C. Law 11-226 substituted “Panel on Consumer and Industry Concerns” for “Panel on Adjudication” throughout the section.

Section 1001 of D.C. Law 11-226 provides that Titles I, II, III, V, and VI of the act shall apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal Year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 501(d) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 501(d) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 501(d) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 11-302 provides for application of the act.

Section 1001 of D.C. Act 11-429 provides for application of the act.

Section 1001 of D.C. Act 12-2 provides for application of the act.

Legislative history of Law 6-97. — See note to § 40-1701.

Legislative history of Law 7-109. — See note to § 40-1706.

Legislative history of Law 8-59. — Law 8-59 was introduced in Council and assigned Bill No. 8-351. The Bill was adopted on first and second readings on July 11, 1989 and September 26, 1989, respectively. Signed by the Mayor on October 13, 1989, it was assigned Act No. 8-89 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-107. — See note to § 40-1707.

Legislative history of Law 10-171. — See note to § 40-1708.

Legislative history of Law 11-198. — See note to § 40-1705.

Legislative history of Law 11-226. — See note to § 40-1705.

Application of Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Cited in *Macauley v. District of Columbia Taxicab Comm’n*, App. D.C., 623 A.2d 1207 (1993).

§ 40-1709.1. Hearing examiner; appointment, powers and duties; appeals.

Repealed. Apr. 9, 1997, D.C. Law 11-198, § 501(e), 43 DCR 4569.

Temporary repeal of section. — Section 501(e) of D.C. Law 11-226 repealed the section.

Section 1001 of D.C. Law 11-226 provides that Titles I, II, III, V, and VI of the act shall apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary repeal of section, see § 501(e) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 501(e) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 501(e) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 11-302 provides for application of the act.

Section 1001 of D.C. Act 11-429 provides for application of the act.

Section 1001 of D.C. Act 12-2 provides for application of the act.

Legislative history of Law 11-198. — See note to § 40-1705.

Legislative history of Law 11-226. — See note to § 40-1705.

Application of Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

§ 40-1709.2. Hearing examiner — appointment, powers, and duties; appeals.

(a) The Chairperson shall appoint at least one attorney to serve as a hearing examiner to adjudicate consumer and industry complaints filed against taxicab owners, operators, companies, associations, fleets, and radio dispatch operations. The hearing examiner shall hear and decide appeals taken from license denials and proposed revocations or suspensions issued by the Office of Taxicabs.

(b) A hearing examiner may:

(1) Preside over a hearing in a contested matter;

(2) Compel the attendance of a witness by subpoena;

(3) Administer an oath, take testimony of a witness under oath, and dismiss, rehear, or continue a case;

(4) Conduct hearings in accordance with Chapter 4 of Title 31 of the District of Columbia Municipal Regulations (Taxicabs and Public Vehicles for Hire) (31 DCMR chapter 4); and

(5) Adjudicate consumer complaints filed pursuant to Chapter 7 of Title 31 of the District of Columbia Municipal Regulations (Taxicab and Public Vehicles for Hire) (31 DCMR chapter 7). (Mar. 25, 1986, D.C. Law 6-97, § 10b, as added March 24, 1998, D.C. Law 12-75, § 2, 45 DCR 384.)

Effect of amendments. — D.C. Law 12-75 added this section.

Temporary addition of section. — Section 2 of D.C. Law 12-6 added this section.

Section 4(b) of D.C. Law 12-6 provides that the act shall expire after the 225th day of its having taken effect or upon the effective date of the District of Columbia Taxicab Commission Establishment Act of 1985 Amendment Act of 1997, whichever occurs first.

Emergency act amendments. — For temporary addition of section, see § 2 of the District of Columbia Taxicab Commission Establishment Act of 1985 Emergency Amendment Act of 1997 (D.C. Act 12-18, March 3, 1997, 44 DCR 1760), see § 2 of the District of Columbia Taxicab Commission Establishment Act of 1985 Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-73, May 27, 1997, 44 DCR 3164), and see § 2 of the Taxicab Commis-

sion Hearing Examiner Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-255, February 19, 1998, 45 DCR 1170).

Legislative history of Law 12-6. — Law 12-6, the “District of Columbia Taxicab Commission Establishment Act of 1985 Temporary Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-81. The Bill was adopted on first and second readings on February 4, 1997, and March 4, 1997, respectively. Signed by the Mayor on March 24, 1997, it was assigned Act No. 12-83 and transmitted to both Houses of Congress for its review. D.C. Law 12-6 became effective on June 5, 1997.

Legislative history of Law 12-75 — Law 12-75, the “Taxicab Commission Hearing Examiner Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-253. The Bill was adopted on first and second readings on November 4, 1997, and December 4,

1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-230 and transmitted to both Houses of Con-

gress for its review. D.C. Law 12-75 became effective on March 24, 1998.

§ 40-1710. Internal and procedural rules.

(a) Each panel of the Commission shall establish respectively rules for the conduct of its organizational affairs and shall establish rules of procedure of general applicability consistent with subchapter I of Chapter 15 of Title 1. The Panel on Adjudication shall include in its rules of procedure specific guidelines to implement § 40-1707(b)(2)(B).

(b) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed disapproved. Nothing in this section shall affect any requirements imposed upon the Commission by subchapter I of Chapter 15 of Title 1. (Mar. 25, 1986, D.C. Law 6-97, § 11, 33 DCR 703; May 10, 1988, D.C. Law 7-109, § 2(f), 35 DCR 2181.)

Section references. — This section is referred to in § 40-1709.1.

Legislative history of Law 6-97. — See note to § 40-1701.

Legislative history of Law 7-109. — See note to § 40-1706.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

§ 40-1711. Full Commission meetings; annual report.

(a) The chairperson shall be responsible for, and shall assure coordination and communication between, both panels of the Commission, and shall have authority to resolve disputes and issues of jurisdiction arising between panels. All members of the Commission shall be kept apprised of the business of the full Commission.

(b) The chairperson shall call a meeting of the full Commission periodically, but no less than once every 2 months, to discuss general affairs of the Commission and matters pertaining to the taxicab industry, to establish and set general policies of the full Commission, and to outline goals and future directions of the Commission. Meetings of the full Commission shall include the participation of other governmental agencies involved in taxicab administration, such as the Metropolitan Police Department, the Office of Taxicabs, and the Washington Metropolitan Area Transit Commission.

(c) The full Commission shall make an annual report to the Mayor and the Council on or before the second Monday of January of each year. The report shall contain, but not be limited to, information and statistics relating to licensing, enforcement, the status of taxicab equipment, estimated industry revenues, and passenger carriage, and shall outline briefly the activities and goals of the Commission.

(d) The full Commission shall periodically evaluate program development and implementation at the hacker's license training course and may issue

policy directives pertaining to program content and program direction. (Mar. 25, 1986, D.C. Law 6-97, § 12, 33 DCR 703.)

Legislative history of Law 6-97. — See note to § 40-1701. 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Effective date. — Section 24(b) of D.C. Law

6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

§ 40-1712. Office of Taxicabs established.

- (a) There is established an Office of Taxicabs.
- (b) The Office shall provide administrative support to the Commission.
- (c) The Office shall be responsible for the execution and administration of this chapter, and all rules, standards, rates, charges, and orders issued by the Commission.
- (d) Repealed.
- (e) The Office shall:
 - (1) Repealed.
 - (2) Administer all license examinations applicable to the taxicab industry;
 - (3) Maintain a system of public records relating to licensed owners and operators of taxicabs and taxicab companies, associations, and fleets;
 - (4) Repealed.
 - (5) Receive complaints lodged against the owners and operators of taxicabs, taxicab companies, associations, fleets, and dispatch services for the violation of any rule, regulation, order, rate, or law applicable specifically to the taxicab industry;
 - (6) Repealed.
 - (7) Administer and enforce all rules, rates, and orders issued under the authority of the Commission applicable to taxicab companies, associations, fleets, taxicab facilities, taxi dispatch services, and the owners and operators of taxicabs;
 - (8) Develop, maintain, and keep current under the direction of the Commission a body of information for public and Commission use relating to taxi industry operations within the District, regionally, and nationwide, which information shall include, but not be limited to, statistics, analyses, studies, and projections relating to matters such as revenue, operational costs, passenger carriage, profits, practices, and technologies characterizing the taxi industry; and
 - (9) Perform any other administrative functions necessary to carry out the purposes of this chapter which are assigned to the Office by the Commission.
- (f) There shall be no less than 12 hack inspectors to be employed in enforcing the present rules and regulations pertaining to taxicabs and any future rules and regulations established. A primary function of the hack inspectors shall be to ensure the proper provision of service and to support safety.
- (g) Nothing in this section shall abrogate the authority of officers of the Metropolitan Police Force to enforce and issue citations relating to taxicab requirements.

(h)(1) A proposed suspension or revocation by the Office of a license issued under the authority of this chapter shall not take effect until a final decision is rendered by the Commission upon a timely appeal taken by a licensee or, if no appeal is taken, upon the lapse of the period specified, by rule, for appeal.

(2) The Office may immediately suspend a license issued under the authority of this chapter where the Office has determined that an imminent danger is posed to the public. Within 3 days of the issuance by the Office of an immediate suspension, a hearing shall be held before an examiner in the Panel on Consumer and Industry Concerns. Appeals from immediate suspensions shall be taken to the Commission in the same manner as provided for in cases of appeals of proposed suspensions or revocations. (Mar. 25, 1986, D.C. Law 6-97, § 13, 33 DCR 703; May 1, 1990, D.C. Law 8-107, § 2(d), 37 DCR 1623; Apr. 9, 1997, D.C. Law 11-198, § 501(f), 43 DCR 4569.)

Cross references. — As to general licensing of vehicles for hire, see § 47-2829.

Section references. — This section is referred to in §§ 40-1703 and 40-1707.

Section effective March 25, 1987. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Effect of amendments. — D.C. Law 11-198 rewrote (a); substituted “execution and administration” for “execution, administration, and enforcement” in (c); repealed (d), (e)(1), (e)(4), and (e)(6); and substituted “Panel on Consumer and Industry Concerns” for “Panel on Adjudication” in (h)(2).

Temporary amendment of section. — Section 501(f) of D.C. Law 11-226 rewrote (a); substituted “execution and administration” for “execution, administration, and enforcement” in (c); repealed (d), (e)(1), (e)(4), and (e)(6); and substituted “Panel on Consumer and Industry Concerns” for “Panel on Adjudication” in (h)(2).

Section 1001 of D.C. Law 11-226 provides that Titles I, II, III, V, and VI of the act shall apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 501(f) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), see § 501(f) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and see § 501(f) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 11-302 provides for the application of the act.

Section 1001 of D.C. Act 11-429 provides for application of the act.

Section 1001 of D.C. Act 12-2 provides for application of the act.

Legislative history of Law 6-97. — See note to § 40-1701.

Legislative history of Law 8-59. — See note to § 40-1709.

Legislative history of Law 8-107. — See note to § 40-1707.

Legislative history of Law 11-198. — See note to § 40-1705.

Legislative history of Law 11-226. — See note to § 40-1705.

Application of Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Hacker’s License Appeal Board abolished. — Section 23(a) of D.C. Law 6-97 provided that the Hacker’s License Appeal Board established by Commissioners’ Order 68-59, effective August 15, 1968, is abolished. Section 23(b) of D.C. Law 6-97 provided that the Commission shall be the successor to the Board and any complaint, proceeding, or matter pending before the Board on the effective date of this section shall be a complaint, proceeding, or matter of the Commission. Section 24(b) of D.C. Law 6-97 provided that §§ 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Removal of permits. — There is no provision in the D.C. Code authorizing the Chief of the D.C. Office of Taxicabs, without complying with due process, to remove the taxicab permit from possession of the holder and tear off the signature. *Carole v. Stokes*, 117 WLR 2585 (Super. Ct. 1989).

§ 40-1713. Regulation of passenger vehicles for hire.

(a) The Mayor may issue any reasonable rule relating to the supervision of passenger vehicles for hire he or she considers necessary for the protection of the public.

(b) The Mayor may establish standards, criteria, and requirements for the licensing of the different classes of passenger vehicles for hire and the owner and operators thereof, and may establish appropriate classes of license fees for the ownership and operation of passenger vehicles for hire subject to the requirements of this section, provided that no license requirement for operating authority shall be mandated by the Mayor which is duplicative of the jurisdiction of the Washington Metropolitan Area Transit Commission.

(c) No person, corporation, partnership, or association shall operate a passenger vehicle for hire in the District without first having procured all applicable licenses and meeting all requirements as mandated by the Mayor. Any violation of this subsection shall subject a violator to a civil fine not to exceed \$500.

(d) The Mayor may establish reasonable civil fines for violation of any rule issued pursuant to the authority of this section.

(e) All rules and regulations applicable to passenger vehicles for hire in effect on March 25, 1986, shall remain effective until amended or repealed by the Mayor. (Mar. 25, 1986, D.C. Law 6-97, § 14, 33 DCR 703.)

Section effective March 25, 1987. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Legislative history of Law 6-97. — See note to § 40-1701.

Construction with federal law. — District of Columbia's limousine licensing regulations were not preempted by federal law, namely the

Washington Metropolitan Area Regulation Compact, because regulations (1) neither imposed a rate structure nor regulated market entry; and (2) did nothing more than establish licensing fees and impose additional non-discretionary licensing requirements on limousine operators, such as corporate reporting, vehicle inspection, and the like. *Boston Coach-Washington v. District of Columbia Taxicab Comm'n*, 930 F. Supp. 649 (D.D.C. 1996).

§ 40-1714. Insurance.

(a) Each owner of a taxicab operated in the District shall maintain a bond or policy of liability insurance covering accident risks for payment of judgments and legal claims arising out of the ownership, maintenance, or operation of a taxicab consistent with the provisions of the Compulsory/No Fault Motor Vehicle Insurance Act of 1982 Amendments Act of 1985.

(b) The bond or policy of liability insurance required by this section shall provide minimum coverage by a surety or insurer on any 1 judgment of \$10,000 for bodily injuries or death, and \$5,000 for damage to property, and \$20,000 for bodily injury or death, and \$5,000 for damage to property for all judgments arising out of the same subject of action, to be apportioned ratably among creditors according to the amount of their respective rights, until these requirements are superseded by the Compulsory/No Fault Motor Vehicle Insurance Act of 1982 Amendments Act of 1985.

(c) The liability of a surety or insurer on an indemnity or policy of liability issued under this section shall be absolute for damages adjudged against an insured.

(d) Each owner of a taxicab operated in the District shall file with the Office evidence that a bond or policy of liability insurance meeting the requirements of this section is in force for the owner's taxicab. The Office shall maintain accurate and current information on all insured taxicabs and shall maintain accurate and current records on all taxicabs for which insurance or a bond has been cancelled.

(e) Policies of liability insurance shall be issued only by companies authorized by the Commissioner to do business in the District, and all sureties bonding taxicabs operated in the District shall be approved by the Commissioner. No insurer or surety shall engage in the business of insuring or bonding taxicabs unless a certificate of approval is issued by the Commissioner to engage in such a business, which approval shall be given upon a finding by the Commissioner that the company is qualified and its management capable of conducting such a business in the public interest.

(f) The Commissioner shall issue reasonable rules in furtherance of the protection of the public governing:

(1) The business and practices of insurers and sureties indemnifying accident risks of taxicabs operated in the District, including the expenses of management, administration, and acquisition of business;

(2) The writing of insurance and the making of bonds for the coverage of accident risks of taxicabs; and

(3) The rate and rate structure of insurance for coverage of the accident risks of taxicabs operated in the District.

(g) The Commissioner may, after a hearing, withdraw the certificate of approval of any insurer or surety violating a provision of this section or any rule issued by the Commissioner pursuant to the authority of this chapter.

(h) No bond or policy of insurance required by this chapter may be cancelled unless not less than 20 days notice of cancellation or termination has been provided to the insured in writing, and notice of intent to cancel has been filed with the Commissioner and Office not less than 20 days prior to the date of cancellation or termination, except that cancellation for nonpayment of premium shall require not less than 5 days written notice to the insured, and the filing of notice of intent to cancel with the Commissioner and Office not less than 5 days prior to the date of cancellation. (Mar. 25, 1986, D.C. Law 6-97, § 15, 33 DCR 703; May 21, 1997, D.C. Law 11-268, § 10(ii)(2), 44 DCR 1730.)

Section references. — This section is referred to in § 40-1715.

Section effective March 25, 1987. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Effect of amendments. — D.C. Law 11-268 substituted "Commissioner" for "Superintendent" throughout (e) through (h).

Legislative history of Law 6-97. — See note to § 40-1701.

Legislative history of Law 11-268. — See note to § 40-1703.

References in text. — The "Compulsory/No Fault Motor Vehicle Insurance Act of 1982 Amendments Act of 1985", referred to at the end of subsections (a) and (b), is D.C. Law 6-96.

§ 40-1715. Sinking funds; blanket policies.

(a) Any owner of a taxicab required to file a bond or policy of liability insurance under § 40-1714 may instead:

(1) File with the Commissioner a blanket bond or blanket policy of liability insurance in an amount considered sufficient by the Commissioner to cover accident risks for the payment of judgments or claims arising out of the ownership, maintenance, or operation of the taxicabs to which the blanket bond or blanket policy shall relate, and covering all vehicles lawfully displaying the trade name or identifying design of any individual, association, company, or corporation. The Commissioner shall periodically review all blanket bonds or blanket policies filed under this subsection to assure that the amount of the bond or policy is adequate to protect the public and may after a hearing order the adjustment of the required amount of the bond or policy as is reasonable and necessary to protect the public; or

(2) Create and maintain a sinking fund in an amount the Commissioner considers reasonable and necessary to protect the public, and deposit the same, in trust, for the payment of any judgment recovered against the owner arising out of the ownership, maintenance, or operation of a covered taxicab, with the person, official, or corporation the Commissioner shall designate. A sinking fund shall not be created unless the Commissioner is satisfied that the owner is possessed and will continue to be possessed of the financial ability to pay judgments obtained against the owner. If such a fund has been created, the Commissioner shall have authority and shall periodically require whatever evidence of the owner's financial status is necessary to satisfy the Commissioner of financial ability to pay judgments, and may, based upon findings after a hearing, impose any reasonable and necessary requirement as will assure the financial integrity of the fund. If upon the evidence and after a hearing on the issue the Commissioner finds that a fund is not possessed and will likely not continue to be possessed of financial ability to pay judgments, the Commissioner shall require that the owner file a bond or policy of insurance required by § 40-1714, and shall return to the owner the amount of the sinking fund when the Commissioner is satisfied that the maintenance thereof is not needed to assure the payment of any claim or judgment then outstanding. Failure to pay any judgment within 30 days after judgment becomes final shall constitute reasonable grounds for finding that the owner is not possessed of financial ability to pay judgments.

(b) If any owner elects to comply with the provisions of this section, he or she shall file an admission of liability with the Commissioner, in conformity with the principles of respondeat superior, for the tortious acts of drivers of vehicles displaying the trade name or identifying design of the company, association, or the owner.

(c) Any cash or collateral deposit or sinking fund provided for in this section shall be exempt from attachment or levy for any obligation or liability of the depositor except as provided in this section.

(d) It shall be unlawful to operate any vehicle subject to the provisions of § 40-1714 and this section unless the vehicle is insured as provided in this

chapter, under threat of a civil fine not to exceed \$500. Any violation of any regulation or requirement issued or ordered pursuant to § 40-1714 or this section shall be subject to a civil fine not to exceed \$500.

(e) For the purpose of this section a blanket bond or sinking fund may be established by the owner of a trade name or identifying design and may cover taxicabs bearing the trade name or identifying design of the owner, multiple fleets of taxicabs bearing different trade names or identifying designs of the owner, or owners of individual taxicabs bearing different trade names or identifying designs of the owner, irrespective of whether the owner of the trade name or identifying design owns the taxicab so long as the registered owner of the taxicab consents in writing to the sinking fund or blanket bond established by the owner of the trade names or identifying design. For the purpose of this subsection a member of a taxicab association shall be considered to have consented to a blanket bond or a sinking fund duly established by the association and no consent in writing shall be required. (Mar. 25, 1986, D.C. Law 6-97, § 16, 33 DCR 703; May 21, 1997, D.C. Law 11-268, § 10(ii)(2), 44 DCR 1730.)

Section effective March 25, 1987. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Effect of amendments. — D.C. Law 11-268

substituted “Commissioner” for “Superintendent” throughout the section.

Legislative history of Law 6-97. — See note to § 40-1701.

Legislative history of Law 11-268. — See note to § 40-1703.

§ 40-1716. Reporting by Commissioner.

(a) Within 12 months of March 25, 1986, the Commissioner shall make a report to the Mayor and the Council and shall recommend changes in the areas of taxicab insurance the Commissioner considers necessary for the protection of the public and the public interest in taxi transportation.

(b) The report shall contain the views of the Commission on recommendations made by the Commissioner.

(c) The report shall include recommendations relating to:

(1) The appropriate amounts of minimum insurance taxicabs should be required to carry, including an analysis of the economic impact on the taxi industry of a raise in minimum amounts;

(2) The appropriateness and feasibility of extending insurance coverage on taxicabs to include collision and other coverage, and an analysis of the economic impact of extending insurance coverage; and

(3) The current practices of the taxi industry in the area of insurance. (Mar. 25, 1986, D.C. Law 6-97, § 17, 33 DCR 703; May 21, 1997, D.C. Law 11-268, § 10(ii)(2), 44 DCR 1730.)

Section effective March 25, 1987. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Effect of amendments. — D.C. Law 11-268

substituted “Commissioner” for “Superintendent” throughout the section.

Legislative history of Law 6-97. — See note to § 40-1701.

Legislative history of Law 11-268. — See note to § 40-1703.

§ 40-1717. Rate proceeding; standard for rate structure.

(a) Within 12 months of March 25, 1986, and at least once every 24 months thereafter, the Commission's Panel on Rates and Rules shall undertake a review of the taxicab rate structure. The review required by this section shall be undertaken by holding at least one public hearing, upon notice with opportunity to comment. Within 120 days of holding the public hearings, the panel shall render a decision on whether a modification or adjustment in rate structure is warranted, and, if determined to be warranted, shall implement the modification or adjustment.

(b) The panel and the full commission, in the establishment and supervision of the taxicab rate structure, shall balance equitably the interest of owners and operators of taxicabs, taxicab companies and associations, and dispatch services in procuring a maximum rate of return on investment and labor against the public interest in maintaining a taxicab system affordable to a broad cross section of the public, and shall establish nondiscriminatory rates, charges, matrices, boundaries, and methodologies for the determination of taxicab fares which assure reasonable and adequate compensation and promote broad and nondiscriminatory public access to taxicab transportation facilities. (Mar. 25, 1986, D.C. Law 6-97, § 18, 33 DCR 703; May 10, 1988, D.C. Law 7-109, § 2(g), 35 DCR 2181.)

Section effective March 25, 1987. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Effect of amendments. — D.C. Law 7-109

at the beginning of (b) inserted “and the full commission” following “panel”.

Legislative history of Law 6-97. — See note to § 40-1701.

Legislative history of Law 7-109. — See note to § 40-1706.

§ 40-1718. Existing taxi regulations.

Except as modified by this chapter, or until changed by the Commission pursuant to this chapter, all regulations relating to taxicabs contained in the District of Columbia Municipal Regulations shall remain in effect. Within 9 months of the appointment and confirmation of the Commission and the appointment of the chairperson, the Commission shall cause a republication of all regulations relating to taxicabs, including applicable amendments to conform the regulations to this chapter, and revisions issued by the Commission. (Mar. 25, 1986, D.C. Law 6-97, § 19, 33 DCR 703.)

Legislative history of Law 6-97. — See note to § 40-1701.

Mayor authorized to appoint Commission prior to effective date. — Section 24(c) of D.C. Law 6-97 provided that prior to the effective date specified in § 24(b) (1 year after March 25, 1986), the Mayor is authorized to appoint the members and chairperson of the Commission. Upon confirmation, the chairper-

son is authorized to appoint the Chief and approve the hiring of the staff of the Office. Following confirmation of a majority of their members, the Commission panels are authorized to issue internal operating procedures and otherwise organize the Commission in preparation for the performance of duties under the act.

§ 40-1719. License requirement.

(a) No person, corporation, partnership, or association shall operate a taxicab, taxicab company, association, or fleet, or taxicab service within the District without first procuring all applicable licenses required by the Commission pursuant to the authority of this chapter or in the event of licensure by another jurisdiction pursuant to reciprocal agreement. Any violation of this section shall be punishable by a civil fine not to exceed \$500. For purposes of this subsection, the term "operate" includes the provision of taxicab service of any type which physically originates in the District.

(b) A license issued to a taxicab company, association, or fleet shall expire automatically 3 years from the date of its issuance. Applications for renewal shall be made in a manner prescribed by the Commission. The minimum license fee imposed by the Commission pursuant to this chapter on taxicab companies, associations, or fleets for operating authority shall not be less than \$100 per year. (Mar. 25, 1986, D.C. Law 6-97, § 20, 33 DCR 703; Sept. 22, 1994, D.C. Law 10-171, § 2(c), 41 DCR 5149.)

Section references. — This section is referred to in § 40-1721.

Section effective March 25, 1987. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Legislative history of Law 6-97. — See note to § 40-1701.

Legislative history of Law 10-171. — See note to § 40-1708.

Enforcement. — The District of Columbia Taxicab Commission, rather than the Bureau of Traffic Adjudication, was intended to be the agency charged with enforcing laws prohibiting

unlicensed hacking. *Onabiyi v. District of Columbia Taxicab Comm'n*, App. D.C., 557 A.2d 1317 (1989).

Violation of reciprocity agreement constitutes unlicensed hacking. — Since the authority for a Virginia taxi to travel within the District is granted through the reciprocity agreement, violation of that agreement will constitute unlicensed hacking. *Lim v. District of Columbia Taxicab Comm'n*, App. D.C., 564 A.2d 720 (1989).

Cited in *Edward v. District of Columbia Taxicab Comm'n*, App. D.C., 645 A.2d 600 (1994); *Dial A Car, Inc. v. Transportation, Inc.*, 82 F.3d 484 (D.C. Cir. 1996).

§ 40-1720. District of Columbia Taxicab Commission Fund; established.

(a) There is established within the District of Columbia treasury a fiduciary fund to be known as the District of Columbia Taxicab Commission Fund ("Fund"). This fund shall consist of all assessments levied by the Public Service Commission of the District of Columbia against taxicab operators upon the issuance and renewal of a public vehicle operator's identification license issued pursuant to § 47-2829(e), held in miscellaneous trust funds by the Public Service Commission of the District of Columbia and the Office of the People's Counsel prior to June 23, 1987, pursuant to § 43-612(a). These funds shall be accounted for under procedures established pursuant to subchapter V of Chapter 3 of Title 47, or any other applicable law.

(b) The Fund shall be used exclusively by the Commission for the payment of its expenses arising from any investigation or proceeding by the Commission concerning taxicab rates and regulations and for any taxicab related matters. The Fund may be used for the purposes of hiring hack inspectors for no more than 2 years after September 22, 1994.

(c) After June 24 1987, continued resources for the Fund shall be provided through an assessment levied against taxicab operators as determined by Commission rule. Monies deposited into the Fund after June 24, 1987, shall be used by the Commission for any investigation or proceeding by the Commission concerning taxicab rates and regulations as determined by rules promulgated by the Commission and submitted to the Council for approval, in whole or in part, by resolution. No assessment imposed by the Commission on an operator pursuant to this subsection shall exceed \$50 per year. Nothing in this subsection shall affect any requirements imposed upon the Commission by subchapter I of Chapter 15 of Title 1.

(d) The Commission shall assess each taxicab operator \$50 per year upon the issuance or renewal of each operator identification card license.

(e) On October 15th of each year the Commission shall submit to the Council a plan for the use of all monies in the Fund. The proposed plan shall be submitted to the Council for approval, in whole or in part, by resolution. The expenditure of monies in the Fund shall be subject to Council approval of the annual plan. The proposed plan shall be considered approved by the Council on the 45th day after the plan has been submitted for Council consideration unless the Council, within that time, disapproves the plan by resolution. Nothing in this subsection shall affect any requirements imposed upon the Commission by subchapter I of Chapter 15 of Title 1.

(f) On November 1st of each year the Commission shall submit an annual report to the Council on all assessment income received and disbursements made from the Fund during the previous fiscal year. (Mar. 25, 1986, D.C. Law 6-97, § 20a, as added May 10, 1988, D.C. Law 7-107, § 2, 35 DCR 2176; Sept. 22, 1994, D.C. Law 10-171, § 2(d), 41 DCR 5149.)

Legislative history of Law 7-37. — Law 7-37 was introduced in Council and assigned Bill No. 7-261. The Bill was adopted on first and second readings on June 16, 1987 and June 30, 1987, respectively. Signed by the Mayor on July 23, 1987, it was assigned Act No. 7-65 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-107. — Law 7-107, "District of Columbia Taxicab Commission Fund Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-266, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on February 16, 1988 and March 1, 1988, respectively. Signed by the Mayor on March 16, 1988, it was assigned Act No. 7-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-171. — See note to § 40-1708.

Approval of annual plan for use of monies in assessment fund. — Pursuant to Resolution 8-320, the "District of Columbia Taxicab Commission Annual Plan I Assessment Fund Approval Resolution of 1990", effective December 28, 1990, the Council approved the annual

plan for the use of all monies in the District of Columbia Taxicab Commission Assessment Fund.

Pursuant to Resolution 8-321, the "District of Columbia Taxicab Commission Annual Plan II Assessment Fund Approval Resolution of 1990", effective December 28, 1990, the Council approved the annual plan for the use of all monies in the District of Columbia Taxicab Commission Assessment Fund.

Approval of rules. — Pursuant to Resolution 8-281, the "District of Columbia Taxicab Commission Fund Rulemaking Approval Resolution of 1990", effective November 2, 1990, the Council approved the proposed rules to implement the provisions of the District of Columbia Taxicab Commission Fund Amendment Act of 1988.

District of Columbia Taxicab Commission Annual Plan Assessment Fund Approval Resolution of 1992. — Pursuant to Resolution 9-204, effective March 13, 1992, the Council approved the annual plan for the use of all monies in the District of Columbia Taxicab Commission Assessment Fund.

District of Columbia Taxicab Commission Annual Plan Assessment Fund Ap-

proval of 1993. — Pursuant to Resolution 10-83, effective July 30, 1993, the Council approved, the annual plan for the use of all monies in the District of Columbia Taxicab Commission Assessment Fund.

District of Columbia Taxicab Commis-

sion Fund Approval Resolution of 1994. — Pursuant to Resolution 10-333, effective April 22, 1994, the Council approved the annual plan for the use of monies in the District of Columbia Taxicab Commission Fund.

§ 40-1721. Impoundment of a taxicab and passenger vehicle for hire.

(a) Any taxicab or passenger vehicle for hire being operated in the District of Columbia may be booted, towed, and impounded from any public street or public space in the District of Columbia by any member of the Metropolitan Police Department or law enforcement personnel, or any authorized agent if:

(1) The vehicle is being operated without a valid license issued pursuant to § 40-1719 or § 47-2829(c), (d), or (h);

(2) The vehicle is being operated by a person who does not have a valid vehicle operator's license issued pursuant to § 47-2829(e) or (i) or a valid motor vehicle operator's permit;

(3) The vehicle is being operated by a person who has 2 or more unpaid notices of infractions issued pursuant to 31 DCMR 825 or the vehicle has 2 or more unpaid notices of infractions issued pursuant to title 18 of the District of Columbia Municipal Regulations or 31 DCMR 825, or the accumulated unpaid infractions equal or exceed \$400, for which liability has been imposed. For the purposes of this section, a notice of infraction shall not be considered unpaid, pursuant to District of Columbia Taxicab Commission's ("Commission") rules and regulations, until after the vehicle owner or operator has failed to request a hearing within the time limit prescribed by 31 DCMR 323.3, or until after the vehicle owner or operator has had a hearing as requested and a final determination has been made by the Department of Public Works, Bureau of Traffic Adjudication;

(4) The vehicle is not licensed in the District of Columbia and is observed providing intra-District transportation service;

(5) The vehicle does not comply with Chapter 21 of Title 35; or

(6) The vehicle does not comply with District of Columbia inspection standards prescribed by section 603, Chapter 7 of Title 18 of the District of Columbia Municipal Regulations, or 31 DCMR 608.

(b) Any vehicle impounded pursuant to subsection (a) of this section may be towed by a tow crane operator to the Commission or any other secured place designated by the Department of Public Works.

(c) Any vehicle impounded pursuant to subsection (a)(1), (2), or (5) of this section shall have the license removed, the vehicle operator's license suspended, or both, as applicable, pending a hearing pursuant to subsection (e) of this section to determine the propriety of reissuance or return of the license.

(d) Within 3 business days of impoundment, the Chairperson of the Commission shall mail a notice, by first-class mail, certified or registered mail, return receipt requested, to the last known address of the owner and the operator of the impounded vehicle as identified in the records of the Office of Taxicabs. The notice shall contain the following information:

(1) The nature and circumstances under which the vehicle was impounded;

(2) The place where and time when the vehicle can be reclaimed;

(3) A statement that the owner or operator has a right to a hearing pursuant to subsection (e) of this section and the Commission's rules and regulations; and

(4) A statement that if the owner of the impounded vehicle does not, within 15 calendar days of impoundment, seek the release of the vehicle, the vehicle shall be deemed abandoned. Once the vehicle has been deemed abandoned, the owner may reclaim it or it will be sold pursuant to § 40-832.

(e) The owner or operator of a vehicle impounded pursuant to subsection (a)(1) through (5) of this section may request a hearing, in writing. The hearing shall occur within 3 business days of the receipt by the Mayor of a written hearing request. The hearing examiner shall determine:

(1) Whether the vehicle was being operated without a valid license issued pursuant to § 40-1719 and § 47-2829(c), (d), or (h) and whether the vehicle had a prior violation for the same charge;

(2) Whether the vehicle operator was operating the vehicle without a valid license issued pursuant to § 47-2829(e) or (i) and whether the vehicle operator had a prior violation for the same charge;

(3) Whether, according to the Commission's records, the vehicle operator has 2 or more unpaid notices of infractions issued pursuant to 31 DCMR 825 or the vehicle has 2 or more unpaid notices of infractions issued pursuant to Title 18 of the District of Columbia Municipal Regulations or 31 DCMR 825 or the accumulated unpaid infractions equal or exceed \$400 for which liability has been imposed;

(4) Whether the vehicle complies with Chapter 21 of Title 35; and

(5) Whether the vehicle is licensed in the District of Columbia and was observed providing intra-District transportation service.

(f) If a determination is made, pursuant to subsection (e) of this section that, at the time of the impoundment, the vehicle was being operated without a valid license issued pursuant to § 40-1719 or § 47-2829(c), (d), or (h), the hearing examiner shall:

(1) Fine the vehicle owner according to the Commission's rules and regulations; or

(2) If there has been a prior determination that the vehicle had operated without a valid license, fine, not reissue or return the license, and bar the vehicle owner from applying for or obtaining a license for a period of 3 years.

(g) The license of a vehicle owner who receives a favorable determination under subsection (f) of this section shall be reissued or returned.

(h) If a determination is made, pursuant to subsection (e) of this section, that the vehicle was being operated, at the time of the impoundment, without a valid vehicle operator's license issued pursuant to § 47-2829(e) or (i), the hearing examiner shall:

(1) Fine the vehicle operator according to the Commission's rules and regulations; or

(2) If there has been a prior determination that the vehicle operator had operated the vehicle without a valid license, fine, not reissue or return the

vehicle operator's license, and bar the vehicle operator from applying for or obtaining a vehicle operator's license for a period of 3 years.

(i) Upon a favorable determination from the hearing examiner under subsection (h) of this section the vehicle operator's license shall be reissued or returned.

(j) If the hearing examiner determines, pursuant to subsection (e) of this section, that the vehicle operator has 2 or more unpaid notices of infractions issued pursuant to 31 DCMR 825 or the vehicle has 2 or more unpaid notices of infractions issued pursuant to Title 18 of the District of Columbia Municipal Regulations or 31 DCMR 825 or the accumulated unpaid infractions equal or exceed \$400 for which liability has been imposed, the vehicle owner or operator, as applicable, shall be ordered to pay the outstanding fines.

(k) If the hearing examiner determines, pursuant to subsection (e) of this section, that the vehicle does not comply with Chapter 21 of Title 35, the hearing examiner shall impose an appropriate penalty upon the vehicle owner or operator pursuant to Chapter 21 of Title 35 and Title 31 of the District of Columbia Municipal Regulations.

(l) If the hearing examiner determines, pursuant to subsection (e) of this section, that the vehicle is not licensed in the District of Columbia and is observed providing intra-District transportation service, the vehicle and operator shall be considered unlicensed and the vehicle owner or operator as applicable, shall be ordered to pay the infractions issued pursuant to § 40-1719 and 31 DCMR 824.3.

(m) Upon completion of the hearing, the hearing examiner shall issue a written decision containing findings of fact and conclusions of law. If a favorable determination is issued for the vehicle owner or operator, as applicable, the hearing examiner shall issue a release form for the impounded vehicle.

(n) Any party adversely affected by a written decision of a hearing examiner may file written exceptions to the Panel on Adjudication pursuant to the Commission's rules and regulations. The vehicle owner or operator shall first pay the subject fine and all other outstanding fines in order to file for written exceptions.

(o) In lieu of requesting a hearing, the vehicle owner or operator may satisfy all outstanding notices of infraction.

(p) Upon full satisfaction of all outstanding notices of infraction the Office of Taxicabs shall issue a release form for the impounded vehicle.

(q) The owner of an impounded vehicle or other authorized person shall be permitted to secure the release of the vehicle from impoundment upon:

(1) Proof of ownership or other right of possession;

(2) Payment of a towing fee to be determined by the Mayor, plus any storage fee. Payment of a towing fee and any storage fee shall be waived upon favorable determination for the vehicle owner or operator by the hearing examiner; and

(3) Presentation of a release form issued by a hearing examiner.

(r) If within 15 calendar days of impoundment the vehicle has not been reclaimed, the vehicle shall be deemed abandoned and shall be released to the

Department of Public Works to be processed as an abandoned vehicle pursuant to § 40-832.

(s) The Metropolitan Police Department or law enforcement personnel, or any authorized agent acting pursuant to subsection (a)(6) of this section may:

(1) Direct the operator of the vehicle to immediately remove the vehicle to an official District of Columbia inspection station for inspection or reinspection notwithstanding the fact that the vehicle displays an approval inspection sticker pursuant to Chapters 6 and 7 of Title 18 of the District of Columbia Municipal Regulations; or

(2) Tow the vehicle by a tow crane operator to an official District of Columbia inspection station for inspection. After inspection or reinspection, if the vehicle is determined not to be operable or no owner or operator is available to arrange transportation of the vehicle to another location, the Mayor may impound the vehicle pursuant to this section and have a tow crane operator tow the vehicle to any other secured place designated by the Mayor. (Mar. 16, 1993, D.C. Law 9-199, § 2, 39 DCR 9211; Apr. 9, 1997, D.C. Law 11-198, § 502, 43 DCR 4569.)

Effect of amendments. — D.C. Law 11-198 deleted “the Office of Taxicabs, any Hack Inspector” preceding “any member” in the introductory paragraph of (a); substituted “the Department of Public Works, Bureau of Traffic Adjudication” for “the Commission” in (a)(3); substituted “the Department of Public Works” for “the Office of Taxicabs” in (b); substituted “Mayor” for “Commission” in the introductory paragraph of (e); deleted “by the Office of Taxicabs or” following “issued” in (q)(3); deleted “The Office of Taxicabs, any Hack Inspector, any member of” from the beginning of (s); and, in (s)(2), substituted “the Mayor may” for “the Office of Taxicabs may” and substituted “to any other secured place designated by the Mayor” for “to the Commission or any other secured place designated by the Chief of the Office of Taxicabs.”

Temporary amendment of section. — Section 502 of D.C. Law 11-226 amended the introductory language of (a), (a)(3), (b), the introductory language of (e), (q)(3), and (s).

Section 1001 of D.C. Law 11-226 provides that Titles I, II, III, V, and VI of the act shall apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 502 of the Fiscal Year 1997 Budget Support Emergency

Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), see § 502 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and see § 502 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 11-302 provides for application of the act.

Section 1001 of D.C. Act 11-429 provides for application of the act.

Section 1001 of D.C. Act 12-2 provides for application of the act.

Legislative history of Law 9-199. — Law 9-199, the “Taxicab and Passenger Vehicle for Hire Impoundment Act of 1992,” was introduced in Council and assigned Bill No. 9-363, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-324 and transmitted to both Houses of Congress for its review. D.C. Law 9-199 became effective on March 16, 1993.

Legislative history of Law 11-198. — See note to § 40-1705.

Legislative history of Law 11-226. — See note to § 40-1705.

Application of Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

§ 40-1722. Enforcement and issuance of citations; report.

The Metropolitan Police Department shall enforce and issue citations relating to taxicab requirements including notices of civil infractions issued pursuant to 31 DCMR 825. The Metropolitan Police Department shall provide to the Taxicab Commission, on an annual basis, a report on the number of citations issued to vehicles for hire. (Apr. 9, 1997, D.C. Law 11-198, § 505, 43 DCR 4569.)

Temporary addition of section. — Section 505 of D. C. Law 11-226 added this section.

Temporary amendment of section. — Section 1001 of D.C. Law 11-226 provides that Titles I, II, III, V, and VI of the act shall apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary addition of section, see § 505 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), see § 505 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of

1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and see § 505 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 11-302 provides for application of the act.

Section 1001 of D.C. Act 11-429 provides for application of the act.

Section 1001 of D.C. Act 12-2 provides for application of the act.

Legislative history of Law 11-198. — See note to § 40-1705.

Application of Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

CHAPTER 18. UNIFORM CLASSIFICATION AND COMMERCIAL DRIVER'S LICENSE.

Sec.	Sec.
40-1801. Definitions.	40-1805. Penalties.
40-1802. Uniform classification and commercial driver's license requirements.	40-1806. Disqualification.
40-1803. Commercial motor vehicle driver responsibility.	40-1807. Medical.
40-1804. Employer responsibility.	40-1808. Fees.
	40-1809. Rules.

§ 40-1801. Definitions.

For the purposes of this chapter, the term:

(1) "Commercial driver's license" means a license issued pursuant to this chapter that authorizes an individual to operate a class of commercial motor vehicle.

(2) "Commercial driver's license information system" means the informational system established pursuant to the Commercial Motor Vehicle Safety Act of 1986, approved October 27, 1986 (100 Stat. 3207; 49 U.S.C. sec. 2701 et seq.) ("Commercial Motor Vehicle Safety Act"), to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(3) "Commercial motor vehicle" means a motor vehicle used in commerce to transport passengers or property:

(A) If the vehicle has a gross vehicle weight rating of greater than 26,000 pounds or a lesser rating as determined by federal regulation but not less than a gross vehicle weight rating of 10,001 pounds;

(B) If the vehicle is designed to transport more than 15 passengers, including the driver; or

(C) If the vehicle is used to transport a material found to be hazardous by the Mayor in accordance with Chapter 33 of Title 6, or by the Secretary of Transportation in accordance with the Hazardous Materials Transportation Act, approved January 3, 1975 (88 Stat. 2156; 49 U.S.C. sec. 1801 et seq.).

(4) "Disqualify" means to withdraw the privilege to drive a commercial motor vehicle. (Sept. 20, 1990, D.C. Law 8-161, § 2, 37 DCR 4665.)

Legislative history of Law 8-161. — Law 8-161, the "Uniform Classification and Commercial Driver's License Act of 1990," was introduced in Council and assigned Bill No. 8-505, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on May 29, 1990, and June 12, 1990, respectively. Signed by the Mayor on June 29, 1990, it was assigned Act No. 8-224

and transmitted to both Houses of Congress for its review.

References in text. — 49 U.S.C. § 2701 et seq., referred to in (2), was repealed in 1994 by P.L. 103-272, § 7(b). For present law, see 49 U.S.C. § 31301 et seq.

The "Hazardous Materials Transportation Act," referred to in (3)(C), is now codified at 49 U.S.C. § 5101 et seq.

§ 40-1802. Uniform classification and commercial driver's license requirements.

The Mayor shall:

(1) Adopt and administer a program to test and ensure the fitness of a

person to operate a commercial motor vehicle in accordance with rules issued pursuant to § 40-1809 that comply with the minimum federal standards established under § 12005(a) of the Commercial Motor Vehicle Safety Act (49 U.S.C. § 2704(a));

(2) Issue a commercial driver's license to a person if the person passes a written and driving test for the operation of a commercial vehicle that complies with the minimum standards required by paragraph (1) of this section;

(3) Issue a commercial driver's license only to a person who operates a commercial motor vehicle and is domiciled in the District of Columbia ("District");

(4) Authorize a person to operate a commercial motor vehicle only by issuance of a commercial driver's license that contains the following information:

(A) The name and address of the person to whom the license is issued and a physical description of the person;

(B) The Social Security number or other information to identify the person;

(C) The class or type of commercial motor vehicle that the person is authorized to operate under the license; and

(D) The duration for which the license is valid;

(5) Not issue a commercial driver's license to a person during a period in which the person is disqualified from the operation of a commercial motor vehicle or the driver's license of the person is suspended, revoked, or cancelled;

(6) Not issue or renew a commercial driver's license to a person who has a commercial driver's license issued by another state unless the person first surrenders the driver's license issued by the other state;

(7) Participate in a national commercial driver's license information system established pursuant to section 12007 of the Commercial Motor Vehicle Safety Act (49 U.S.C. § 2706) to enable the District to have access to information regarding any person who:

(A) Applies for or is issued a commercial driver's license;

(B) Is licensed to drive a commercial motor vehicle in the District;

(C) Is not qualified to drive a commercial motor vehicle in the District;

or

(D) Has been convicted in another jurisdiction of a moving traffic violation while driving a commercial motor vehicle; and

(8) Comply with any other requirement mandated by section 12009 of the Commercial Motor Vehicle Safety Act (49 U.S.C. § 2708). (Sept. 20, 1990, D.C. Law 8-161, § 3, 37 DCR 4665.)

Section references. — This section is referred to in § 40-1808.

Legislative history of Law 8-161. — See note to § 40-1801.

References in text. — "Section § 12005(a) of the Commercial Motor Vehicle Safety Act (49 U.S.C. § 2704(a))", referred to in (1), is currently codified as 49 U.S.C. § 31305(a).

"Section § 12007 of the Commercial Motor Vehicle Safety Act (49 U.S.C. § 2706)", referred to in the introductory language of (7), is currently codified as 49 U.S.C. § 31309.

"Section § 12009 of the Commercial Motor Vehicle Safety Act (49 U.S.C. § 2708)", referred to in (8), is currently codified as 49 U.S.C. § 31311.

§ 40-1803. Commercial motor vehicle driver responsibility.

(a) Any person who operates a commercial motor vehicle and is domiciled in the District shall have a commercial driver's license issued by the Mayor.

(b) Any person who is issued a commercial motor vehicle driver's license by the Mayor shall surrender any commercial driver's license issued by another state at the time the District commercial driver's license is issued.

(c) Any person who has a driver's license suspended, revoked, or cancelled by the Mayor, who loses the right to operate a commercial motor vehicle, or who is disqualified from the operation of a commercial motor vehicle for any period shall notify his or her employer of the suspension, revocation, cancellation, lost right, or disqualification.

(d) Any person who operates a commercial motor vehicle and applies for employment as an operator of a commercial motor vehicle with an employer shall notify the employer, at the time of application, of his or her previous employment as an operator of a commercial motor vehicle. (Sept. 20, 1990, D.C. Law 8-161, § 4, 37 DCR 4665.)

Section references. — This section is referred to in § 40-1805.

Legislative history of Law 8-161. — See note to § 40-1801.

§ 40-1804. Employer responsibility.

(a) An employer shall require an employee who operates a commercial vehicle to have a commercial driver's license.

(b) An employer shall not knowingly allow an employee to operate a commercial motor vehicle during any period in which the employee has:

(1) A driver's license suspended, revoked, or cancelled;

(2) Lost the right to operate or been disqualified from operating a commercial motor vehicle; or

(3) More than one commercial motor vehicle license. (Sept. 20, 1990, D.C. Law 8-161, § 5, 37 DCR 4665.)

Section references. — This section is referred to in § 40-1805.

Legislative history of Law 8-161. — See note to § 40-1801.

§ 40-1805. Penalties.

(a) If the Mayor has reason to believe that a person has violated any of the requirements in § 40-1803 or § 40-1804, the alleged violation shall be enforced in accordance with Chapter 6 of this title, and rules issued by the Mayor pursuant to § 40-1809. Any person who is determined by the Mayor, after notice and opportunity to be heard, to have violated § 40-1803 or § 40-1804, shall be liable to the District for a civil fine of not less than \$100 nor more than \$1000 for the first violation, of not less than \$500 nor more than \$2000 for the second violation, or of not less than \$1000 nor more than \$5000 for the third or a subsequent violation.

(b)(1) As an alternative sanction, any person who knowingly or willfully violates § 40-1803 or § 40-1804 shall be guilty of an offense and, upon conviction, may be:

(A) Fined not less than \$100 nor more than \$1000, imprisoned for not more than 6 months, or both, for the first violation;

(B) Fined not less than \$500 nor more than \$2000, imprisoned not less than 6 months nor more than 9 months, or both, for the second violation; or

(C) Fined not less than \$1000 nor more than \$5000, imprisoned for not less than 9 months nor more than 1 year, or both, for the third or a subsequent violation.

(2) Prosecutions for violations of this subsection shall be brought by the Corporation Counsel. (Sept. 20, D.C. Law 8-161, § 6, 37 DCR 4665.)

Legislative history of Law 8-161. — See note to § 40-1801.

§ 40-1806. Disqualification.

(a) Consistent with subchapter I of Chapter 15 of Title 1, and Chapter 6 of this title, the Mayor shall disqualify from the operation of a commercial motor vehicle any person who is found to have committed any of the following:

(1) Driving a commercial motor vehicle while under the influence of alcohol or a controlled substance. For the purposes of this section, the phrase “while under the influence of alcohol” means a blood alcohol concentration at or above 0.04% as established under 12008(f) of the Commercial Motor Vehicle Safety Act (40 U.S.C. § 2707(f)). The phrase “controlled substance” means a drug, substance, or immediate precursor, as set forth in Chapter 5 of Title 33;

(2) Leaving the scene of an accident that involves a commercial motor vehicle operated by the person;

(3) Using a commercial vehicle in the commission of a felony; or

(4) Commission of 2 or more serious traffic violations that involve a commercial motor vehicle operated by the person within a 3-year period.

(b) A person who is found to have committed any violation set forth in subsection (a) of this section may have his or her commercial driver’s license suspended for 1 year for the first violation, from 10 years to life for the second violation, and for life for the third violation.

(c) Notwithstanding the periods of disqualification set forth in subsection (b) of this section, if a person who uses a commercial vehicle in connection with a felony is transporting a hazardous material, the Mayor shall disqualify the person for a period of not less than 3 years. If a person uses a commercial vehicle in the commission of a felony that involves the manufacturing, distributing, or dispensing of a controlled substance, the Mayor shall disqualify the person from operating the vehicle for life. (Sept. 20, 1990, D.C. Law 8-161, § 7, 37 DCR 4665.)

Legislative history of Law 8-161. — See note to § 40-1801.

References in text. — “Section § 12008(f) of the Commercial Motor Vehicle Safety Act (40

U.S.C. § 2707(f))”, referred to in (a)(1), was formerly codified as 49 U.S.C. § 2707(f), and is currently codified as 49 U.S.C. § 31310(a).

§ 40-1807. **Medical.**

The Bureau of Motor Vehicle Services, Office of Medical Review, may establish medical standards for all commercial and District government drivers. (Sept. 20, 1990, D.C. Law 8-161, § 8, 37 DCR 4665.)

Legislative history of Law 8-161. — See note to § 40-1801.

§ 40-1808. **Fees.**

The Mayor shall set and collect fees to help pay the cost for implementation of the uniform classification and commercial driver's license program set forth in § 40-1802. The money generated from the fees shall be placed in a designated account and used to offset the cost of the uniform classification and commercial driver's license program. (Sept. 20, 1990, D.C. Law 8-161, § 9, 37 DCR 4665.)

Legislative history of Law 8-161. — See note to § 40-1801.

§ 40-1809. **Rules.**

(a) Within 90 days after September 20, 1990, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter.

(b) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be deemed approved. (Sept. 20, 1990, D.C. Law 8-161, § 10, 37 DCR 4665.)

Section references. — This section is referred to in §§ 40-1802 and 40-1805.

Legislative history of Law 8-161. — See note to § 40-1801.

Uniform Classification and Commercial Driver's License Act of 1990 Conditional

Rules Approval Resolution of 1992. — Pursuant to Resolution 9-169, effective January 24, 1992, the Council conditionally approved the proposed rules for implementing the Uniform Classification and Commercial Driver's License Act of 1990.

CHAPTER 19. FOOD DELIVERY INSURANCE REQUIREMENTS.

Sec.

40-1901. Definitions.

40-1902. Insurance, inspection, and registration required.

Sec.

40-1903. Driver safety programs.

40-1904. Penalty.

40-1905. Rules.

§ 40-1901. Definitions.

For the purposes of this chapter:

(1) “Consumer” means the purchaser of any food or any person who eats the purchased food.

(2) “Driver safety course” means an employer-sponsored course designed to teach defensive driving and road safety skills.

(3) “Food delivery service” means a service offered by a restaurant or retail business for the delivery of food or food products directly to a consumer.

(4) “Motor vehicle” means any vehicle propelled by an internal combustion engine, electricity, or steam. The term “motor vehicle” shall not include a road roller, farm tractor, vehicle propelled only upon a stationary rail or track, or a battery-operated wheelchair operated by a handicapped person at a speed not exceeding 10 miles per hour.

(5) “Restaurant” means a place in the District of Columbia (“District”) that sells or prepares food, drinks, or refreshments to be consumed by persons on or off the premises where prepared or sold. (Sept. 20, 1990, D.C. Law 8-162, § 2, 37 DCR 4671.)

Legislative history of Law 8-162. — Law 8-162, the “Food Delivery Insurance Requirements Act of 1990,” was introduced in Council and assigned Bill No. 8-401, which was referred to the Committee on Public Works. The Bill was

adopted on first and second readings on May 29, 1990, and June 12, 1990, respectively. Signed by the Mayor on June 29, 1990, it was assigned Act No. 8-225 and transmitted to both Houses of Congress for its review.

§ 40-1902. Insurance, inspection, and registration required.

(a) Any motor vehicle used for food delivery service shall be insured for the business purpose of food delivery by the food delivery service employer. The food delivery service employer shall certify quarterly with the Mayor that the motor vehicle is insured.

(b) Any motor vehicle used for food delivery service, but not required to be registered in the District of Columbia under subchapter I of Chapter 1 of this title, shall be inspected annually pursuant to Chapter 6 of Title 18 of the District of Columbia Municipal Regulations. For this inspection, the Mayor shall prescribe an annual inspection fee of not less than \$25, to be collected in the same manner as prescribed for motor vehicles registered in the District. (Sept. 20, 1990, D.C. Law 8-162, § 3, 37 DCR 4671.)

Legislative history of Law 8-162. — See note to § 40-1901.

§ 40-1903. Driver safety programs.

Any food delivery service driver shall complete a driver safety course within the first 90 days of employment. The driver safety course shall be approved by the Bureau of Motor Vehicle Services. (Sept. 20, 1990, D.C. Law 8-162, § 4, 37 DCR 4671.)

Legislative history of Law 8-162. — See note to § 40-1901.

§ 40-1904. Penalty.

Any person who violates this chapter shall be subject to a civil fine of not less than \$100 nor more than \$500 for the first offense or not less than \$500 nor more than \$1000 for the second or subsequent offense, a suspension of the restaurant or other business license for up to 60 days, or both. (Sept. 20, 1990, D.C. Law 8-162, § 5, 37 DCR 4671.)

Legislative history of Law 8-162. — See note to § 40-1901.

§ 40-1905. Rules.

The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. (Sept. 20, 1990, D.C. Law 8-162, § 6, 37 DCR 4671.)

Legislative history of Law 8-162. — See note to § 40-1901.

CHAPTER 20. ALTERNATIVE FUELS TECHNOLOGY.

Sec.	Sec.
40-2001. Policy.	40-2008. Vehicle conversions.
40-2002. Definitions.	40-2009. Fuel provider requirements.
40-2003. Reports; technology assessment, development, and implementation.	40-2010. Choice of fuels.
40-2004. Commercial vehicle restrictions.	40-2011. Civil penalty.
40-2004.1. Report by Mayor.	40-2012. Emission credit trading program.
40-2005. Rules.	40-2013. Operational incentives for clean-fuel fleets.
40-2006. Citizen right of action.	40-2014. Financial and operational incentives for use of alternative fuels.
40-2007. Emission standards.	

§ 40-2001. Policy.

(a) It is the policy of the District of Columbia (“District”) government to promote, protect, and preserve a safe and healthy living environment for its inhabitants.

(b) It is in the best interest of District residents that the District government pursue, as other municipalities have, both domestic and international, a comprehensive plan for the development and implementation of specific goals and timetables for the improvement of local air quality through the exploration, demonstration, procurement, and utilization of passenger and nonpassenger motor vehicles powered by clean alternative fuels.

(c) The integration of alternative fuels technology in the transportation element of the nation’s capital should include, at the very least, aggressive participation by the District government fleet, commercial transportation fleets, and the Washington Metropolitan Area Transit Authority (“WMATA”).

(d) Section 246 of the Clean Air Act requires that the District develop a state implementation plan revision that manages harmful emissions from motor vehicles by establishing a clean fuel fleet program that is consistent with federal law and regulations. As part of a multi-jurisdiction ozone nonattainment area encompassing portions of the District and the states of Maryland and Virginia, the District must implement a clean fuel fleet program. (Mar. 8, 1991, D.C. Law 8-243, § 2, 38 DCR 355; Mar. 14, 1995, D.C. Law 10-201, § 2(a), 41 DCR 7178.)

Legislative history of Law 8-243. — Law 8-243, the “Alternative Fuels Technology Act of 1990,” was introduced in Council and assigned Bill No. 8-649, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-326 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-201. — Law 10-201, the “Clean Fuel Fleet Vehicle Program and Alternative Fuels Incentives Amendment

Act of 1994,” was introduced in Council and assigned Bill No. 10-658, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on July 5, 1994, and October 4, 1994, respectively. Signed by the Mayor on October 21, 1994, it was assigned Act No. 10-338 and transmitted to both Houses of Congress for its review. D.C. Law 10-201 became effective on March 14, 1995.

References in text. — “Section 246 of the Clean Air Act,” referred to in (d), is codified as 42 U.S.C. § 7586.

§ 40-2002. Definitions.

For the purpose of this chapter, the term:

(1) “Alternative fuel” means methanol, ethanol, or other alcohols (includ-

ing any mixture of gasoline or other fuels containing 85% or more by volume of alcohol), natural gas, liquefied petroleum gas, propane, or electricity.

(2) "Alternative-fuel vehicle" means a dedicated, flexible-fueled, bi-fueled, or dual-fueled vehicle that operates on an alternative fuel.

(3) "Bi-fuel vehicle" means a motor vehicle that is equipped to operate on either a clean-burning alternative fuel or a conventional fuel, including gasoline or diesel fuel.

(4) "Capable of being centrally fueled" means a fleet, or that part of a fleet, consisting of vehicles that can be refueled 100% of the time at a location that is owned, operated, or controlled by the covered fleet operator, or is under contract with the covered fleet operator.

(5) "Centrally fueled" means a fleet, or that part of a fleet, consisting of vehicles that are fueled 100% of the time at a location that is owned, operated, or controlled by the covered fleet operator or is under contract with the covered fleet operator, including any vehicle that under normal operations is garaged at a personal residence at night, but that is centrally fueled 100% of the time.

(6) "Clean Air Act" means the Clean Air Act, approved December 17, 1963 (77 Stat. 392; 42 U.S.C. § 7401 et seq.), as amended.

(7) "Clean fuel" means any fuel, including methanol, ethanol, or other alcohols (including any mixture thereof containing 85% or more by volume of alcohol with gasoline or other fuel), reformulated gasoline, diesel, natural gas, liquefied petroleum gas, hydrogen, or power source (including electricity) used in a clean-fuel vehicle that complies with standards and requirements applicable to such vehicle when using such fuel or power source.

(8) "Clean-fuel fleet vehicle" or "CFFV" means a clean-fuel vehicle operated by a covered fleet operator.

(9) "Clean-fuel vehicle" means a motor vehicle which has been certified to meet, for any model year, a set of emission standards that classifies it as a clean-fuel vehicle, in accordance with this chapter.

(10) "Contract fueling" means that a fleet vehicle is required to be refueled at a service station or other facility with which the fleet operator has entered into a contract for such refueling purposes. Commercial fleet service cards which are provided to fleet operators by any leasing or vehicle management company do not constitute contract fueling.

(11) "Converted vehicle" means a conventionally fueled vehicle that is converted to operate on a clean fuel in accordance with federal regulations and meets the emission standards set forth for that class of clean-fuel vehicle.

(12) "Covered area" means any part of the District that is included in an ozone nonattainment area classified under Subpart 2 of Part D of Title I of the Clean Air Act as serious, severe, or extreme based on data for the calendar years 1987, 1988, and 1989.

(13) "Covered fleet" means any fleet of 10 or more covered fleet vehicles owned, operated, leased, used, maintained, or otherwise controlled by a person. The term "covered fleet" does not include motor vehicles exempt under § 40-2004.

(14) "Covered fleet operator" means a person who operates a fleet of at least 10 covered fleet vehicles that is operated in the covered area.

(15) “Covered fleet vehicle” means any motor vehicle which is in a vehicle class for which emission standards are applicable under § 40-2007 and in a covered fleet which is centrally fueled or capable of being centrally fueled. The term “covered fleet vehicle” does not include motor vehicles exempt under § 40-2004.

(16) “Credit” means a credit for the acquisition of a clean-fuel vehicle pursuant to § 246(f) of the Clean Air Act.

(17) “Dedicated vehicle” means a vehicle that operates solely on a clean alternative fuel.

(18) “Dual-fuel vehicle” means a motor vehicle that operates on 2 fuel sources.

(19) “Emergency vehicle” means any vehicle that is legally authorized by a governmental authority to exceed the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, including a rescue vehicle, fire truck, or ambulance.

(20) “Federal fleet” means any fleet owned or operated by the United States government.

(21) “Flexible-fueled vehicle” means a vehicle that is capable of operating on either or any combination of 2 fuels.

(22) “Fuel provider” means any person that provides fuel to a covered fleet.

(23) “Garaged under normal operations at a personal residence” means a vehicle that, when it is not in use, is normally parked at the personal residence of the individual who usually operates it, rather than at a central refueling, maintenance, or business location. These vehicles are not considered to be capable of being centrally fueled and are exempt from the program unless they are, in fact, centrally fueled 100% of the time.

(24) “Heavy duty vehicle” or “HDV” means a vehicle weighing more than 8,501 pounds GVWR but less than 26,000 pounds GVWR.

(25) “High-Occupancy Vehicle lanes” means transportation control measures which restrict a vehicle’s access to certain roadway lanes based on the number of occupants in the vehicle.

(26) “Inherently low-emission vehicle” or “ILEV” means any light-duty motor vehicle, light-duty truck, or heavy-duty vehicle that is certified as a low-emission vehicle pursuant to emission standards promulgated by the Environmental Protection Agency.

(27) “Law enforcement vehicle” means any vehicle that is primarily operated by a civilian or military police officer or sheriff, enforcement agency of the federal government, state highway patrols, municipal law enforcement, or other similar law enforcement agency, and that is used for the purpose of law enforcement activities, including chase, apprehension, surveillance, or patrol of people engaged in, or potentially engaged in, unlawful activities.

(28) “Light duty truck” or “LDT” means a truck weighing 8,500 pounds GVWR or less.

(29) “Light duty vehicle” or “LDV” means a vehicle weighing 8,500 pounds GVWR or less.

(30) “Location” means any building, structure, facility, or installation, that is owned or operated by a person, or is under the control of a person,

located on one or more contiguous properties, and contains, or could contain, a fueling pump or pumps for the use of the vehicles owned or controlled by that person. The term "location" includes all of the facilities of the fleet operator in a single covered area, in their entirety. The term "location" is not meant to be interpreted narrowly, such as a single refueling pump.

(31) "Low-emission vehicle" or "LEV" means a vehicle that meets the LEV emission standards promulgated under the Clean Air Act.

(32) "Model Year" means the period between September 1 and August 31 of the preceding calendar year.

(33) "Motor vehicle" means any motor vehicle, as defined in § 40-101(1).

(34) "Nonroad vehicle" means a vehicle that is powered by a nonroad engine and that is not a motor vehicle, or a vehicle used solely for competition.

(35) "Partially covered fleet" means any fleet that contains 10 or more covered fleet vehicles, but also contains exempt vehicles including law enforcement and emergency vehicles.

(36) "Person" means an individual, partnership, corporation, association, or any agency, instrumentality, or department of any government.

(37) "Purchase" or "acquisition" includes a lease.

(38) "Qualified second market vehicle" means a vehicle that:

(A) Has been in use for at least 18 months, but not more than 36 months;

(B) Has 50% or more of its useful life remaining;

(C) Is owned or operated by a private covered fleet operator that operates fleets in the District; or

(D) Is a ULEV, ILEV or ZEV.

(39) "Ultra low-emission vehicle" or "ULEV" means a vehicle that is certified as meeting the ULEV emission standards promulgated under the Clean Air Act.

(40) "Zero-emission vehicle" or "ZEV" means a vehicle that is certified as meeting the ZEV emission standards promulgated under the Clean Air Act. (Mar. 8, 1991, D.C. Law 8-243, § 3, 38 DCR 355; Mar. 17, 1994, D.C. Law 10-78, § 2(a), 40 DCR 8464; Mar. 14, 1995, D.C. Law 10-201, § 2(b), 41 DCR 7178.)

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Alternative Fuels Technology Emergency Amendment Act of 1993 (D.C. Act 10-135, October 27, 1993, 40 DCR 7607) and § 2(a) of the Alternative Fuels Technology Congressional Recess Emergency Amendment Act of 1994 (D.C. Act 10-175, January 25, 1994, 41 DCR 510).

Legislative history of Law 8-243. — See note to § 40-2001.

Legislative history of Law 9-232. — Law 9-232, the "Alternative Fuels of 1990 Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-722. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January

4, 1993, it was assigned Act No. 9-363 and transmitted to both Houses of Congress for its review. D.C. Law 9-232 became effective on March 17, 1993.

Legislative history of Law 10-78. — Law 10-78, the "Alternative Fuels Technology Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-47, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the Mayor on November 17, 1993, it was assigned Act No. 10-151 and transmitted to both Houses of Congress for its review. D.C. Law 10-78 became effective on March 17, 1994.

Legislative history of Law 10-201. — See note to § 40-2001.

References in text. — “Section 246(f) of the Clean Air Act,” referred to in (16), is codified as 42 U.S.C. § 7586(f).

§ 40-2003. Reports; technology assessment, development, and implementation.

(a)(1) Pursuant to rules issued by the Mayor pursuant to § 40-2005, operators of all covered fleets shall register with the Mayor within 120 days after the effective date of the rules. In the case of fleets which become covered fleets after the effective date of the rules, the fleet operator shall register with the Mayor within 90 days of becoming a covered fleet.

(2) Accurate records shall be maintained by covered fleet operators to verify compliance with this chapter. All records shall be maintained for the current model year and the previous model year. For purposes of enforcement of this chapter, officers and employees of the District, duly designated by the Mayor as inspectors, shall be authorized to inspect the records of a covered fleet operator. All records provided by covered fleet operators shall be treated as confidential and proprietary trade secrets.

(b)(1) Of the new covered fleet vehicles purchased each year by a covered fleet operator in Model Year 1998 and thereafter, at least a specified percentage of the vehicles shall be clean-fuel vehicles as provided in this subsection. These vehicles shall use a clean fuel when operating in the covered area.

(2) Clean-fuel vehicles shall be purchased according to the following percentages in Model Year 1998:

(A) 30% of light duty vehicles (“LDVs”) and light duty trucks (“LDTs”) under 6,000 pounds gross vehicle weight rating (GVWR);

(B) 30% of LDTs between 6,000 pounds and 8,500 pounds GVWR; and

(C) 50% of heavy duty vehicles (“HDVs”) over 8,500 pounds and less than 26,000 pounds GVWR.

(3) Clean-fuel vehicles shall be purchased according to the following percentages in Model Year 1999:

(A) 50% of LDTs and LDVs less than 6,000 pounds GVWR;

(B) 50% of LDTs and LDVs between 6,000 pounds and 8,500 pounds GVWR; and

(C) 50% of HDVs more than 8,500 pounds and less than 26,000 pounds GVWR.

(4) Clean-fuel vehicles shall be purchased according to the following percentages in Model Year 2000 and every Model Year thereafter:

(A) 70% of LDTs and LDVs less than 6,000 pounds GVWR;

(B) 70% of LDTs and LDVs between 6,000 pounds and 8,500 pounds GVWR; and

(C) 50% of HDVs more than 8,500 pounds and less than 26,000 pounds GVWR.

(c) Any owner or operator of a commercial fleet may petition the Mayor, pursuant to rules issued by the Mayor, for provisional relief from compliance with this section after demonstrating or showing cause of hardship. The Mayor may, after careful and balanced review and after taking into account various

factors including cost, available technology, service and repair facilities, safety, lead time, environmental impact pursuant to the public health, safety, or welfare, and any other relevant factors, grant whatever provisional relief deemed appropriate.

(d) Failure to comply with the requirements of this section shall result in a fine not to exceed \$5,000 for each day of noncompliance and may result in the forfeiture of any right, license, permit, or privilege to operate a commercial vehicle in the District. (Mar. 8, 1991, D.C. Law 8-243, § 4, 38 DCR 355; Mar. 17, 1994, D.C. Law 10-78, § 2(b), 40 DCR 8464; Mar. 14, 1995, D.C. Law. 10-201, § 2(c), 41 DCR 7178.)

Section references. — This section is referred to in § 40-2005.

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Alternative Fuels Technology Emergency Amendment Act of 1993 (D.C. Act 10-135, October 27, 1993, 40 DCR 7607), § 2(b) of the Alternative Fuels Technology Congressional Recess Emergency Amendment Act of 1994 (D.C. Act 10-175, January 25, 1994, 41 DCR 510) and § 2 of the Fuels Technology Emergency Amendment Act of 1994 (D.C. Act 10-211, March 17, 1994, 41 DCR 1652).

Legislative history of Law 8-243. — See note to § 40-2001.

Legislative history of Law 9-232. — See note to § 40-2002.

Legislative history of Law 10-78. — See note to § 40-2002.

Legislative history of Law 10-132. — Law 10-132, the “Fuels Technology Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-591. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-231 and transmitted to both Houses of Congress for its review. D.C. Law 10-132 became effective on June 28, 1994.

Legislative history of Law 10-201. — See note to § 40-2001.

§ 40-2004. Commercial vehicle restrictions.

(a) Except as otherwise provided in this chapter, the following vehicles are exempt from the purchase requirements contained in this chapter:

- (1) Any vehicle more than 26,000 pounds GVWR;
- (2) Emergency or law enforcement vehicles;
- (3) Nonroad vehicles, including farm and construction vehicles;
- (4) Vehicles in fleets operating in the covered area with fewer than 10 vehicles;
- (5) Vehicles in a covered fleet not capable of being centrally fueled;
- (6) Vehicles which are garaged under normal operations at a personal residence;
- (7) Vehicles leased or rented to the general public;
- (8) New car demonstration vehicles; and
- (9) Vehicles used for product demonstrations and tests.

(b) The fact that one or more vehicles in a fleet is not centrally fueled does not exempt an entire fleet from the purchase requirements contained in this chapter. (Mar. 8, 1991, D.C. Law 8-243, § 5, 38 DCR 355; Mar. 14, 1995, D.C. Law. 10-201, § 2(d), 41 DCR 7178.)

Section references. — This section is referred to in §§ 40-2002 and 40-2005.

Legislative history of Law 8-243. — See note to § 40-2001.

Legislative history of Law 10-201. — See note to § 40-2001.

§ 40-2004.1. Report by Mayor.

The Mayor, on or before March 1 of each year, shall submit to the Council a report detailing the following:

- (a) The total number of alternative-fuel vehicles purchased by the District in the previous fiscal year, by agency;
- (b) The total number of alternative-fuel vehicles owned by the District, by agency;
- (c) The total number of vehicles owned by the District, by agency;
- (d) The percentage of alternative-fuel vehicles, by agency;
- (e) A plan to purchase additional alternative-fuel vehicles in the upcoming fiscal year and subsequent fiscal years; and
- (f) A plan to comply with the purchase requirements mandated by this chapter. (Mar. 8, 1991, D.C. Law 8-243, § 5a, as added Mar. 14, 1995, D.C. Law 10-201, § 2(e), 41 DCR 7178.)

Legislative history of Law 10-201. — See note to § 40-2001.

§ 40-2005. Rules.

The Mayor shall, pursuant to subchapter 1 of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter. (Mar. 8, 1991, D.C. Law 8-243, § 6, 38 DCR 355; Mar. 17, 1994, D.C. Law 10-78, § 2(c), 40 DCR 8464; Mar. 14, 1995, D.C. Law 10-201, § 2(f), 41 DCR 7178.)

Section references. — This section is referred to in §§ 40-2002 through 40-2004.

Legislative history of Law 8-243. — See note to § 40-2001.

Legislative history of Law 9-232. — See note to § 40-2002.

Legislative history of Law 10-78. — See note to § 40-2002.

Legislative history of Law 10-201. — See note to § 40-2001.

Alternate Fuels Technology Act of 1990 Proposed Rules Disapproval Resolution of 1994. — Pursuant to Resolution 10-259, effective January 14, 1995, the Council disapproved the proposed rules implementing the Alternative Fuels Technology Act of 1990.

§ 40-2006. Citizen right of action.

Any person aggrieved by the failure of an owner or operator of a commercial fleet to comply with this chapter may sue for relief in any court of competent jurisdiction. The court may grant whatever declaratory or injunctive relief it deems appropriate. Reasonable attorney's fees and court costs may be awarded to the prevailing party, other than the District government, for actions brought under this section. (Mar. 8, 1991, D.C. Law 8-243, § 7, 38 DCR 355.)

Legislative history of Law 8-243. — See note to § 40-2001.

§ 40-2007. Emission standards.

- (a) Any clean-fuel vehicle purchased pursuant to the requirements of this chapter shall meet the emission standard for its respective vehicle class and

category as contained in §§ 243-245 of the Clean Air Act and regulations promulgated under these sections by the Environmental Protection Agency.

(b) Clean-fuel vehicle emission standards may only be amended by the Mayor to the extent necessary to conform with revisions promulgated after the enactment of the Clean Air Act by the Environmental Protection Agency. (Mar. 8, 1991, D.C. Law 8-243, § 8, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

Section references. — This section is referred to in § 40-2002.

Legislative history of Law 10-201. — See note to § 40-2001.

§ 40-2008. Vehicle conversions.

(a) The requirements of this chapter may be met through conversion of existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles which comply with the applicable requirements of this chapter. For purposes of such provisions, the conversion of a vehicle to a clean-fuel vehicle shall be treated as a purchase. Nothing in this chapter shall be construed to provide that any covered fleet operator subject to the requirements of this chapter shall be required to convert existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles or to purchase converted vehicles.

(b) Manufacturers of conversion kits, as well as installers, shall, on request of any fleet operator, the District, or the EPA, demonstrate that vehicles converted to clean-fuel vehicles have a configuration that complies with the emission standards contained in the Clean Air Act, any regulations promulgated by the Environmental Protection Agency, and any regulations promulgated by the Mayor in accordance with this chapter. (Mar. 8, 1991, D.C. Law 8-243, § 9, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

Legislative history of Law 10-201. — See note to § 40-2001.

§ 40-2009. Fuel provider requirements.

Pursuant to § 246(e) of the Clean Air Act, fuel providers shall make clean fuels available to covered fleet operators at locations at which covered fleet vehicles are fueled. (Mar. 8, 1991, D.C. Law 8-243, § 10, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

Legislative history of Law 10-201. — See note to § 40-2001.

Clean Air Act,” referred to in this section, is codified as 42 U.S.C. § 7586(e).

References in text. — “Section 246(e) of the

§ 40-2010. Choice of fuels.

The choice of clean-fuel vehicles and clean fuels shall be made by the covered fleet operators subject to the requirements of this chapter. (Mar. 8, 1991, D.C. Law 8-243, § 11, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

Legislative history of Law 10-201. — See note to § 40-2001.

§ 40-2011. Civil penalty.

(a) Each person who fails to comply with any of the provisions of this chapter, prevents any inspection authorized by this chapter, or keeps false records shall be punished by a fine not to exceed \$5,000.

(b) Each violation of, or failure to comply with, this chapter shall constitute a separate offense and the penalties described in subsection (a) of this section shall be applicable to each separate offense. (Mar. 8, 1991, D.C. Law 8-243, § 13, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

Legislative history of Law 10-201. — See note to § 40-2001.

§ 40-2012. Emission credit trading program.

(a) Covered fleet operators may meet the fleet vehicle purchase requirements of this chapter by purchasing clean-fuel vehicles, whether new, used, or converted vehicles, converting existing gasoline or diesel-powered vehicles to clean-fuel vehicles, or by trading and banking clean-fuel fleet vehicle credits.

(b) Clean-fuel fleet vehicle credits may be earned by a covered fleet operator for any of the following qualifying purchases:

(1) Purchase of a clean-fuel vehicle during any period after March 1, 1993, but before September 1, 1997, if the purchase meets all other clean-fuel fleet vehicle requirements applicable to such purchase, including the requirement to use only the fuel on which the vehicle was certified;

(2) Purchase of a greater number of clean-fuel fleet vehicles than is required under this chapter;

(3) Purchase of a clean-fuel fleet vehicle that meets more stringent emission standards than required under this chapter (ULEVs, ZEVs and ILEVs);

(4) Purchase of a clean-fuel fleet vehicle in an exempt vehicle category by the operator of a covered or partially-covered fleet; or

(5) Purchase of a clean-fuel fleet vehicle by a fleet operator who voluntarily opts-in to the clean fuel fleet program, and who thereafter shall be subject to the requirements of this chapter as if the operator were a covered fleet operator.

(c) The Mayor shall, to determine the feasibility of providing the trading of credits between mobile and stationary sources and between jurisdictions within the same nonattainment area or the District, study and promulgate a report within 2 years after March 14, 1995. (Mar. 8, 1991, D.C. Law 8-243, § 14, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178; Apr. 18, 1996, D.C. Law 11-110, § 46, 43 DCR 530.)

Effect of amendments. — D.C. Law 11-110 validated a previously made technical correction to D.C. Law 10-201.

Legislative history of Law 10-201. — See note to § 40-2001.

Legislative history of Law 11-110. — Law

11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5,

1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 40-2013. Operational incentives for clean-fuel fleets.

(a) Clean-fuel vehicles operated by covered fleet operators shall be exempt from measures which restrict vehicle usage based primarily on temporal considerations, such as time-of-day and day-of-week restrictions and commercial vehicle bans. This exemption does not include access to High-Occupancy Vehicle lanes, except as provided in subsection (b) of this section.

(b) A fleet vehicle which has been certified by the Environmental Protection Agency as an ILEV, is operated by a covered fleet, and continues to be in compliance with applicable ILEV emission standards shall be exempt from High-Occupancy Vehicle lane restrictions.

(c) The Mayor may issue any regulations the Mayor considers necessary for implementing the exemptions provided for in this section within 45 days after March 14, 1995. The exemptions shall be available to covered fleet vehicles upon the adoption of such regulations. (Mar. 8, 1991, D.C. Law 8-243, § 15, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

Legislative history of Law 10-201. — See note to § 40-2001.

§ 40-2014. Financial and operational incentives for use of alternative fuels.

(a) Not later than 180 days after March 14, 1995, the Mayor, where feasible, shall submit to the Council proposed legislation, regulations, or a combination thereof, that provides for financial and operational incentives for the commercial fleet use of alternative fuels.

(b) Where feasible, as determined by the Mayor, the proposal shall include the following:

(1) Income tax credits for alternative fuels vehicles and certain fueling property that:

(A) Are based on § 179A of the United States Internal Revenue Code; and

(B) Are comparable to similar credits allowed by one or more states adjacent to the District;

(2) A motor fuel tax exception for alternative fuel vehicles that is comparable to similar credits allowed by one or more states adjacent to the District;

(3) Preferential parking or loading use on District owned parking lots and curbside parking spaces (to be known as “green curb parking and loading areas”) for covered fleet using alternative fuels;

(4) Requirements that the District purchase qualified second market vehicles to help establish a long term viable market for alternative fuel vehicles; and

(5) The creation of a fund by the District to ensure competitive resale values of used alternative fuel vehicles, the funds for which would derive from gifts and other contributions.

(c) The incentives shall be structured and administered so as to qualify for recognition by the EPA for air quality standards attainment purposes. (Mar. 8, 1991, D.C. Law 8-243, § 16, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

Legislative history of Law 10-201. — See note to § 40-2001.

United States Internal Revenue Code”, referred to in (b)(1)(A), is codified as 26 U.S.C. § 179A.

References in text. — “Section 179A of the

TITLE 41. PARTNERSHIPS.

Chapter

1. Uniform Partnerships..... [Repealed].
- 1A. Uniform Partnership Act of 1996..... §§ 41-151.1 to 41-162.3.
2. Uniform Limited Partnerships..... [Repealed].
3. Dissolution and Payment of Debts..... §§ 41-301 to 41-304.
4. Uniform Limited Partnership Act of 1987..... §§ 41-401 to 41-499.26.

Cross references. — As to certification and registration of accounting partnerships, see § 2-104 et seq.

CHAPTER 1. UNIFORM PARTNERSHIPS.

Sec.

41-101 to 41-148. [Repealed].

§§ 41-101 to 41-148. Definition of terms; interpretation of knowledge and notice; rules of construction; rules for cases not provided for in this chapter; “partnership” defined; registration and fees; rules for determining the existence of a partnership; partnership property; acquisition and conveyance of title; role of partners in partnership business; acts requiring authorization for binding; acts requiring authorization by all partners; conveyance of real property of the partnership; admissions or representations deemed binding on partnership; partnership charged with knowledge of or notice to partner; liability — wrongful act of partner; same — partner’s breach of trust; same — extent for partnership; same — partner by estoppel; same — incurred by incoming partner; rules determining rights and duties of partners; partnership books; right to inspect; duty of partners to render information; partner accountable as a fiduciary; right to an account; continuation of partnership beyond fixed term; rights and duties of partners; property rights of partner — extent; same — specific partnership property; assignability; attachment or execution; partner’s interest in

partnership — profits and surplus; same — effect of assignment on partnership; rights of assignee; same — charging order; appointment of receiver; redemption of interest charged; “dissolution” defined; dissolution — no termination of partnership; same — causes; same — decree of court; same — effect on authority of partner; same — right of partner to contribution from copartners; same — power of partner to bind partnership; liability of partner; same — effect on partner’s existing liability; discharge of liability; same — right to wind up; same — rights of partners to application of partnership property; same — fraud or misrepresentation; rights of partner; same — order of distribution of assets; liabilities; contribution of partners to satisfy liabilities; rights of assignees; partner’s right to enforce contributions; distribution of claims against separate property; continuing partnership business — liability of partners in certain cases; rights of creditors; same — rights of retiring or estate of deceased partner; accrual of right to account; registered limited liability partnerships; name of registered limited liability partnerships; insurance requirement for registered limited liability partnerships; nature of partners’ liability in registered limited liability partnership; foreign registered limited liability partnerships; applicability of chapter to foreign and interstate commerce.

Repealed. Jan. 1, 1998, D.C. Law 11-234, § 1203, 44 DCR 777.

Legislative history of Law 11-234 — Law 11-234, the “Uniform Partnership Act of 1996,” was introduced in Council and assigned Bill No. 11-344, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December

24, 1996, it was assigned Act No. 11-494 and transmitted to both Houses of Congress for its review. D.C. Law 11-234 became effective on April 9, 1997.

Chapter repealed effective January 1, 1998. — Section 1203 of D.C. Law 11-234 provided that §§ 41-101 through 41-148 are repealed effective January 1, 1998.

UNIFORM PARTNERSHIP ACT OF 1996

CHAPTER 1A. UNIFORM PARTNERSHIP ACT OF 1996.

Subchapter I. General Provisions.

Sec.

- 41-151.1. Definitions.
- 41-151.2. Knowledge and notice.
- 41-151.3. Effect of partnership agreement; nonwaivable provisions.
- 41-151.4. Supplemental principles of law.
- 41-151.5. Execution, filing, and recording of statements.
- 41-151.6. Governing law.
- 41-151.7. Partnership subject to amendment or repeal of chapter.

Subchapter II. Nature of Partnership.

- 41-152.1. Partnership as entity.
- 41-152.2. Formation of partnership.
- 41-152.3. Partnership property.
- 41-152.4. When property is partnership property.

Subchapter III. Relations of Partners to Persons Dealing with Partnership.

- 41-153.1. Partner agent of partnership.
- 41-153.2. Transfer of partnership property.
- 41-153.3. Statement of partnership authority.
- 41-153.4. Statement of denial.
- 41-153.5. Partnership liable for partner's actionable conduct.
- 41-153.6. Partner's liability.
- 41-153.7. Actions by and against partnership and partners.
- 41-153.8. Liability of purported partner.

Subchapter IV. Relations of Partners to Each Other and to Partnership.

- 41-154.1. Partner's rights and duties.
- 41-154.2. Distributions in kind.
- 41-154.3. Partner's rights and duties with respect to information.
- 41-154.4. General standards of partner's conduct.
- 41-154.5. Actions by partnership and partners.
- 41-154.6. Continuation of partnership beyond definite term or particular undertaking.

Subchapter V. Transferees and Creditors of Partner.

- 41-155.1. Partner not co-owner of partnership property.
- 41-155.2. Partner's transferable interest in partnership.
- 41-155.3. Transfer of partner's transferable interest.
- 41-155.4. Partner's transferable interest subject to charging order.

Subchapter VI. Partner's Dissociation.

Sec.

- 41-156.1. Events causing partner's dissociation.
- 41-156.2. Partner's power to dissociate; wrongful dissociation.
- 41-156.3. Effect of partner's dissociation.

Subchapter VII. Partner's Dissociation When Business not Wound Up.

- 41-157.1. Purchase of dissociated partner's interest.
- 41-157.2. Dissociated partner's power to bind and liability to partnership.
- 41-157.3. Dissociated partner's liability to other persons.
- 41-157.4. Statement of dissociation.
- 41-157.5. Continued use of partnership name.

Subchapter VIII. Winding Up Partnership Business.

- 41-158.1. Events causing dissolution and winding up of partnership business.
- 41-158.2. Partnership continues after dissolution.
- 41-158.3. Right to wind up partnership business.
- 41-158.4. Partner's power to bind partnership after dissolution.
- 41-158.5. Statement of dissolution.
- 41-158.6. Partner's liability to other partners after dissolution.
- 41-158.7. Settlement of accounts and contributions among partners.

Subchapter IX. Conversions and Mergers.

- 41-159.1. Definitions.
- 41-159.2. Conversion of partnership to limited partnership.
- 41-159.3. Conversion of limited partnership to partnership.
- 41-159.4. Effect of conversion; entity unchanged.
- 41-159.5. Merger of partnerships.
- 41-159.6. Effect of merger.
- 41-159.7. Statement of merger.
- 41-159.8. Exchange.
- 41-159.9. Nonexclusive.

Subchapter X. Limited Liability Partnership.

- 41-160.1. Statement of qualification.
- 41-160.2. Name.
- 41-160.3. Biennial report.
- 41-160.4. Registration and fees.

Subchapter XI. Foreign Limited Liability Partnership.

- 41-161.1. Law governing foreign limited liability partnership.

Sec.

- 41-161.2. Statement of foreign qualification.
- 41-161.3. Effect of failure to qualify.
- 41-161.4. Activities not constituting transacting business.
- 41-161.5. Action by Corporation Counsel.
- 41-161.6. Applicability of act to foreign and interstate commerce.

Subchapter XII. Miscellaneous Provisions.

Sec.

- 41-162.1. Uniformity of application and construction.
- 41-162.2. Savings clause.
- 41-162.3. Applicability.

Subchapter I. General Provisions.

§ 41-151.1. Definitions.

For the purposes of this chapter, the term:

- (1) "Business" includes every trade, occupation, and profession.
- (2) "Debtor in bankruptcy" means a person who is the subject of:
 - (A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
 - (B) A comparable order under federal, state, or foreign law governing insolvency.
- (3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.
- (4) "Foreign limited liability partnership" means a partnership that:
 - (A) Is formed under laws other than the laws of the District of Columbia; and
 - (B) Has the status of a limited liability partnership under those laws.
- (5) "Limited liability partnership" means a partnership that has filed a statement of qualification under § 41-160.1 and complies with § 41-160.4 and does not have a similar statement in effect in any other jurisdiction.
- (6) "Mayor" means the Mayor of the District of Columbia.
- (7) "Partnership" means an association of 2 or more persons to carry on as co-owners a business for profit formed under § 41-152.2, predecessor law, or comparable law of another jurisdiction.
- (8) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.
- (9) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.
- (10) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.
- (11) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (12) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(13) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(14) "Statement" means a statement of partnership authority under § 41-153.3, a statement of denial under § 41-153.4, a statement of dissociation under § 41-157.4, a statement of dissolution under § 41-158.5, a statement of merger under § 41-159.7, a statement of qualification under § 41-160.1, a statement of foreign qualification under § 41-161.2, or an amendment or cancellation of any of the foregoing.

(15) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance. (Apr. 9, 1997, D.C. Law 11-234, § 101, 44 DCR 777.)

Legislative history of Law 11-234. — Law 11-234, the "Uniform Partnership Act of 1996," was introduced in Council and assigned Bill No. 11-344, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings

on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-494 and transmitted to both Houses of Congress for its review. D.C. Law 11-234 became effective on April 9, 1997.

§ 41-151.2. Knowledge and notice.

(a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

(1) Knows of it;

(2) Has received a notification of it; or

(3) Has reason to know it exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(d) A person receives a notification when the notification:

(1) Comes to the person's attention; or

(2) Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as otherwise provided in subsection (f) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by notice to, or receipt

of a notification by, the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner. (Apr. 9, 1997, D.C. Law 11-234, § 102, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-151.3. Effect of partnership agreement; nonwaivable provisions.

(a) Except as otherwise provided in subsection (b) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

(1) Vary the rights and duties under § 41-151.5 except to eliminate the duty to provide copies of statements to all of the partners;

(2) Unreasonably restrict the right of access to books and records under § 41-154.3(b);

(3) Eliminate the duty of loyalty under § 41-154.4(b) or § 41-156.3(b)(3), but:

(A) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(B) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) Unreasonably reduce the duty of care under § 41-154.4(c) or § 41-156.3(b)(3);

(5) Eliminate the obligation of good faith and fair dealing under § 41-154.4(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) Vary the power to dissociate as a partner under § 41-156.2(a), except to require the notice under § 41-156.1(1) to be in writing;

(7) Vary the right of a court to expel a partner in the events specified in § 41-156.1(5);

(8) Vary the requirement to wind up the partnership business in cases specified in § 41-158.1(4), (5), or (6);

(9) Vary the law applicable to a limited liability partnership under § 41-151.6(b); or

(10) Restrict rights of third parties under this chapter. (Apr. 9, 1997, D.C. Law 11-234, § 103, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-151.4. Supplemental principles of law.

(a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in § 28-3301. (Apr. 9, 1997, D.C. Law 11-234, § 104, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-151.5. Execution, filing, and recording of statements.

(a) A statement may be filed with the Mayor. A certified copy of a statement that is filed in an office in another state may be filed with the Mayor. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in the District of Columbia.

(b) A certified copy of a statement that has been filed with the Mayor and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement filed with the Mayor does not have the effect provided for recorded statements in this chapter.

(c) A statement filed by a partnership must be executed by at least 2 partners. Other statements must be executed by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(d) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(e) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(f) The Mayor may collect a fee for filing or providing a certified copy of a statement and for recording the statement. (Apr. 9, 1997, D.C. Law 11-234, § 105, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-151.3, 41-153.3, 41-159.7, 41-160.1, and 41-161.2.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-151.6. Governing law.

(a) Except as otherwise provided in subsection (b) of this section or § 41-161.1(a), the law of the jurisdiction in which a partnership has its chief

executive office governs relations among the partners and between the partners and the partnership.

(b) The law of District of Columbia governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership. (Apr. 9, 1997, D.C. Law 11-234, § 106, 44 DCR 777.)

Section references. — This section is referred to in § 41-151.3.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-151.7. Partnership subject to amendment or repeal of chapter.

A partnership governed by this chapter is subject to any amendment to or repeal of this chapter. (Apr. 9, 1997, D.C. Law 11-234, § 107, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

Subchapter II. Nature of Partnership.

§ 41-152.1. Partnership as entity.

(a) A partnership is an entity distinct from its partners.

(b) A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under § 41-1601. (Apr. 9, 1997, D.C. Law 11-234, § 201, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-152.2. Formation of partnership.

(a) Except as otherwise provided in subsection (b) of this section, the association of 2 or more persons to carry on as co-owners of a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

(c) In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

- (A) Of a debt by installments or otherwise;
- (B) For services as an independent contractor or of wages or other compensation to an employee;
- (C) Of rent;
- (D) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;
- (E) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or
- (F) For the sale of the goodwill of a business or other property by installments or otherwise. (Apr. 9, 1997, D.C. Law 11-234, § 202, 44 DCR 777.)

Section references. — This section is referred to in § 41-151.1.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-152.3. Partnership property.

Property acquired by a partnership is property of the partnership and not of the partners individually. (Apr. 9, 1997, D.C. Law 11-234, § 203, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-152.4. When property is partnership property.

- (a) Property is partnership property if acquired in the name of:
 - (1) The partnership; or
 - (2) One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.
- (b) Property is acquired in the name of the partnership by a transfer to:
 - (1) The partnership in its name; or
 - (2) One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.
- (c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.
- (d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes. (Apr. 9, 1997, D.C. Law 11-234, § 204, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

Subchapter III. Relations of Partners to Persons Dealing with Partnership.

§ 41-153.1. Partner agent of partnership.

Subject to the effect of a statement of partnership authority under § 41-153.3:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners. (Apr. 9, 1997, D.C. Law 11-234, § 301, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-153.2, 41-154.1, 41-157.2, 41-158.4, and 41-158.5.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-153.2. Transfer of partnership property.

(a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership authority under § 41-153.3, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them in their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them in their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under § 41-153.1 and:

(1) As to a subsequent transferee who gave value for property transferred under subsection (a)(1) and (2) of this section, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) As to a transferee who gave value for property transferred under subsection (a)(3) of this section, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (b) of this section, from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document. (Apr. 9, 1997, D.C. Law 11-234, § 302, 44 DCR 777.)

Section references. — This section is referred to in § 41-159.7.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-153.3. Statement of partnership authority.

(a) A partnership may file a statement of partnership authority, which:

(1) Must include:

(A) The name of the partnership;

(B) The street address of its chief executive office and of one office in District of Columbia, if there is one;

(C) The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (b) of this section; and

(D) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(c) If a filed statement of partnership authority is executed pursuant to § 41-151.5(c) and states the name of the partnership but does not contain all of the other information required by subsection (a) of this section, the statement nevertheless operates with respect to a person not a partner as provided in subsections (d) and (e) of this section.

(d) Except as otherwise provided in subsection (g) of this section, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement.

A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as otherwise provided in subsections (d) and (e) of this section and §§ 41-157.4 and 41-158.5, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law 5 years after the date on which the statement, or the most recent amendment, was filed with the Mayor. (Apr. 9, 1997, D.C. Law 11-234, § 303, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-151.1, 41-153.1, 41-153.2, 41-153.4, 41-157.2, 41-157.3, 41-157.4, and 41-158.5.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-153.4. Statement of denial.

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to § 41-153.3(b) may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in § 41-153.3(d) and (e). (Apr. 9, 1997, D.C. Law 11-234, § 304, 44 DCR 777.)

Section references. — This section is referred to in § 41-151.1.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-153.5. Partnership liable for partner's actionable conduct.

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss. (Apr. 9, 1997, D.C. Law 11-234, § 305, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-153.6. Partner's liability.

(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under § 41-160.1(b). (Apr. 9, 1997, D.C. Law 11-234, § 306, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-153.7, 41-157.3, 41-158.6, 41-158.7, 41-159.3, and 41-159.6.

Legislative history of Law 11-234. — See note to § 41-151.1.

Illustrative case. — Partners held jointly and severally liable for the wrongful acts of another partner, where that partner's false statements concealing his illegal actions caused

injury to plaintiffs while the partners were members of the partnership. *BCCI Holdings v. Clifford*, 964 F. Supp. 468 (D.D.C. 1997).

Liability depends upon act, not injury. — A partner's liability is premised upon when the wrongful act or omission of another partner occurs, not when the resulting injury occurs. *BCCI Holdings v. Clifford*, 964 F. Supp. 468 (D.D.C. 1997).

§ 41-153.7. Actions by and against partnership and partners.

(a) A partnership may sue and be sued in the name of the partnership.

(b) Except as otherwise provided in subsection (f) of this section, action may be brought against the partnership and, to the extent not inconsistent with § 41-153.6, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under § 41-153.6 and:

(1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) The partnership is a debtor in bankruptcy;

(3) The partner has agreed that the creditor need not exhaust partnership assets;

(4) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under § 41-153.8.

(f) A partner is not a proper party to an action against a partnership if that partner is not personally liable for the claim under § 41-153.6. (Apr. 9, 1997, D.C. Law 11-234, § 307, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-153.8. Liability of purported partner.

(a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(e) Except as otherwise provided in subsections (a) and (b) of this section, persons who are not partners as to each other are not liable as partners to other persons. (Apr. 9, 1997, D.C. Law 11-234, § 308, 44 DCR 777.)

Section references. — This section is referred to in § 41-153.7.

Legislative history of Law 11-234. — See note to § 41-151.1.

Subchapter IV. Relations of Partners to Each Other and to Partnership.

§ 41-154.1. Partner's rights and duties.

(a) Each partner is deemed to have an account that is:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under § 41-153.1. (Apr. 9, 1997, D.C. Law 11-234, § 401, 44 DCR 777.)

Section references. — This section is referred to in § 41-154.5.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-154.2. Distributions in kind.

A partner has no right to receive, and may not be required to accept, a distribution in kind. (Apr. 9, 1997, D.C. Law 11-234, § 402, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-154.3. Partner's rights and duties with respect to information.

(a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(1) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter; and

(2) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances. (Apr. 9, 1997, D.C. Law 11-234, § 403, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-151.3 and 41-154.5.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-154.4. General standards of partner's conduct.

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c) of this section.

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner. (Apr. 9, 1997, D.C. Law 11-234, § 404, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-151.3, 41-154.5, 41-156.1, and 41-156.3.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-154.5. Actions by partnership and partners.

(a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(1) Enforce the partner's rights under the partnership agreement;

(2) Enforce the partner's rights under this chapter, including:

(A) The partner's rights under § 41-154.1, § 41-154.3, or § 41-154.4;

(B) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to § 41-157.1 or enforce any other right under subchapter VI or VII of this chapter; or

(C) The partner's right to compel a dissolution and winding up of the partnership business under § 41-158.1 or enforce any other right under subchapter; or

(3) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a

dissolution and winding up does not revive a claim barred by law. (Apr. 9, 1997, D.C. Law 11-234, § 405, 44 DCR 777.)

Section references. — This section is referred to in § 41-157.1.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-154.6. Continuation of partnership beyond definite term or particular undertaking.

(a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue. (Apr. 9, 1997, D.C. Law 11-234, § 406, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

Subchapter V. Transferees and Creditors of Partner.

§ 41-155.1. Partner not co-owner of partnership property.

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily. (Apr. 9, 1997, D.C. Law 11-234, § 501, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-155.2. Partner's transferable interest in partnership.

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property. (Apr. 9, 1997, D.C. Law 11-234, § 502, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-155.3. Transfer of partner's transferable interest.

(a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

- (1) Is permissible;
- (2) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(3) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership has a right:

(1) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(3) To seek under § 41-158.1(6) a judicial determination that it is equitable to wind up the partnership business.

(c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(e) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer. (Apr. 9, 1997, D.C. Law 11-234, § 503, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-155.4. Partner's transferable interest subject to charging order.

(a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

(1) By the judgment debtor;

(2) With property other than partnership property, by one or more of the other partners; or

(3) With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(d) This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership. (Apr. 9, 1997, D.C. Law 11-234, § 504, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

Subchapter VI. Partner's Dissociation.

§ 41-156.1. Events causing partner's dissociation.

A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) An event agreed to in the partnership agreement as causing the partner's dissociation;

(3) The partner's expulsion pursuant to the partnership agreement;

(4) The partner's expulsion by the unanimous vote of the other partners if:

(A) It is unlawful to carry on the partnership business with that partner;

(B) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(C) Within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(D) A partnership that is a partner has been dissolved and its business is being wound up;

(5) On application by the partnership or another partner, the partner's expulsion by judicial determination because:

(A) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(B) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under § 41-154.4; or

(C) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) The partner:

(A) Becoming a debtor in bankruptcy;

(B) Executing an assignment for the benefit of creditors;

(C) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(D) Failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) In the case of a partner who is an individual:

(A) The partner's death;

(B) The appointment of a guardian or general conservator for the partner; or

(C) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) Termination of a partner who is not an individual, partnership, corporation, trust, or estate. (Apr. 9, 1997, D.C. Law 11-234, § 601, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-151.3, 41-156.2, and 41-158.1.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-156.2. Partner's power to dissociate; wrongful dissociation.

(a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to § 41-156.1(1).

(b) A partner's dissociation is wrongful only if:

(1) It is in breach of an express provision of the partnership agreement; or

(2) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(A) The partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under § 41-156.1(6) through (10) or wrongful dissociation under this subsection;

(B) The partner is expelled by judicial determination under § 41-156.1(5);

(C) The partner is dissociated by becoming a debtor in bankruptcy; or

(D) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners. (Apr. 9, 1997, D.C. Law 11-234, § 602, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-151.3, 41-157.1, and 41-158.1.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-156.3. Effect of partner's dissociation.

(a) If a partner's dissociation results in a dissolution and winding up of the partnership business, subchapter VIII of this chapter applies; otherwise, subchapter VII of this chapter applies.

(b) Upon a partner's dissociation:

(1) The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in § 41-158.3;

(2) The partner's duty of loyalty under § 41-154.4(b)(3) terminates; and

(3) The partner's duty of loyalty under § 41-154.4(b)(1) and (2) and duty of care under § 41-154.4(c) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to § 41-158.3. (Apr. 9, 1997, D.C. Law 11-234, § 603, 44 DCR 777.)

Section references. — This section is referred to in § 41-151.3.

Legislative history of Law 11-234. — See note to § 41-151.1.

Subchapter VII. Partner's Dissociation When Business not Wound Up.

§ 41-157.1. Purchase of dissociated partner's interest.

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under § 41-158.1, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b) of this section.

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under § 41-158.7(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under § 41-156.2(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under § 41-157.2.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c) of this section.

(f) If a deferred payment is authorized under subsection (h) of this section, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) of this section must be accompanied by the following:

(1) A statement of partnership assets and liabilities as of the date of dissociation;

(2) The latest available partnership balance sheet and income statement, if any;

(3) An explanation of how the estimated amount of the payment was calculated; and

(4) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c) of this section, or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to § 41-154.5(b)(2)(B), to determine the buyout price of that partner's interest, any offsets under subsection (c) of this section, or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c) of this section, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h) of this section, the court

shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g) of this section. (Apr. 9, 1997, D.C. Law 11-234, § 701, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-154.5 and 41-159.6.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-157.2. Dissociated partner's power to bind and liability to partnership.

(a) For 2 years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under subchapter IX of this chapter, is bound by an act of the dissociated partner which would have bound the partnership under § 41-153.1 before dissociation only if at the time of entering into the transaction the other party:

- (1) Reasonably believed that the dissociated partner was then a partner;
- (2) Did not have notice of the partner's dissociation; and
- (3) Is not deemed to have had knowledge under § 41-153.3(e) or notice under § 41-157.4(c).

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a) of this section. (Apr. 9, 1997, D.C. Law 11-234, § 702, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-157.1, 41-157.4, and 41-159.6.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-157.3. Dissociated partner's liability to other persons.

(a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (b) of this section.

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under subchapter IX of this chapter, within 2 years after the partner's dissociation, only if the partner is liable for the obligation under § 41-153.6 and at the time of entering into the transaction the other party:

- (1) Reasonably believed that the dissociated partner was then a partner;
- (2) Did not have notice of the partner's dissociation; and

(3) Is not deemed to have had knowledge under § 41-153.3(e) or notice under § 41-157.4(c).

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation. (Apr. 9, 1997, D.C. Law 11-234, § 703, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-157.4 and 41-159.6.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-157.4. Statement of dissociation.

(a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of § 41-153.3(d) and (e).

(c) For the purposes of § 41-157.2(a)(3) and § 41-157.3(b)(3), a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed. (Apr. 9, 1997, D.C. Law 11-234, § 704, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-151.1, 41-153.3, 41-157.2, and 41-157.3.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-157.5. Continued use of partnership name.

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business. (Apr. 9, 1997, D.C. Law 11-234, § 705, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

Subchapter VIII. Winding Up Partnership Business.

§ 41-158.1. Events causing dissolution and winding up of partnership business.

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under § 41-156.1(2) through (10), of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

(2) In a partnership for a definite term or particular undertaking:

(A) The expiration of 90 days after a partner's dissociation by death or otherwise under § 41-156.1(6) through (10) or wrongful dissociation under § 41-156.2(b), unless before that time a majority in interest of the remaining partners, including partners who have rightfully dissociated pursuant to § 41-156.2(b)(2)(A), agree to continue the partnership;

(B) The express will of all of the partners to wind up the partnership business; or

(C) The expiration of the term or the completion of the undertaking;

(3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business;

(4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) On application by a partner, a judicial determination that:

(A) The economic purpose of the partnership is likely to be unreasonably frustrated;

(B) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(C) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(A) After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(B) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

(Apr. 9, 1997, D.C. Law 11-234, § 801, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-151.3, 41-154.5, 41-155.3, and 41-157.1.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-158.2. Partnership continues after dissolution.

(a) Subject to subsection (b) of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

(1) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after

the dissolution and before the waiver is determined as if dissolution had never occurred; and

(2) The rights of a third party accruing under § 41-158.4(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected. (Apr. 9, 1997, D.C. Law 11-234, § 802, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-158.3. Right to wind up partnership business.

(a) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the Superior Court of the District of Columbia, for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business.

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to § 41-158.7, settle disputes by mediation or arbitration, and perform other necessary acts. (Apr. 9, 1997, D.C. Law 11-234, § 803, 44 DCR 777.)

Section references. — This section is referred to in § 41-156.3.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-158.4. Partner's power to bind partnership after dissolution.

Subject to § 41-158.5, a partnership is bound by a partner's act after dissolution that:

(1) Is appropriate for winding up the partnership business; or

(2) Would have bound the partnership under § 41-153.1 before dissolution, if the other party to the transaction did not have notice of the dissolution. (Apr. 9, 1997, D.C. Law 11-234, § 804, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-158.2, 41-158.5, and 41-158.6.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-158.5. Statement of dissolution.

(a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of § 41-153.3(d) and is a limitation on authority for the purposes of § 41-153.3(e).

(c) For the purposes of §§ 41-153.1 and 41-158.4, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in § 41-153.3(d) and (e) in any transaction, whether or not the transaction is appropriate for winding up the partnership business. (Apr. 9, 1997, D.C. Law 11-234, § 805, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-151.1, 41-153.3, and 41-158.4.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-158.6. Partner's liability to other partners after dissolution.

(a) Except as otherwise provided in subsection (b) of this section and § 41-153.6, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under § 41-158.4.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under § 41-158.4(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability. (Apr. 9, 1997, D.C. Law 11-234, § 806, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-158.7. Settlement of accounts and contributions among partners.

(a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b) of this section.

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable

to an obligation for which the partner is not personally liable under § 41-153.6.

(c) If a partner fails to contribute the full amount required under subsection (b) of this section, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under § 41-153.6. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under § 41-153.6.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under § 41-153.6.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership. (Apr. 9, 1997, D.C. Law 11-234, § 807, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-157.1 and 41-159.6.

Legislative history of Law 11-234. — See note to § 41-151.1.

Subchapter IX. Conversions and Mergers.

§ 41-159.1. Definitions.

For the purposes of this subchapter, the term:

(1) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(2) "Limited partner" means a limited partner in a limited partnership.

(3) "Limited partnership" means a limited partnership created under §§ 41-401 to 41-499.25, predecessor law, or comparable law of another jurisdiction.

(4) "Partner" includes both a general partner and a limited partner. (Apr. 9, 1997, D.C. Law 11-234, § 901, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-159.2. Conversion of partnership to limited partnership.

(a) A partnership may be converted to a limited partnership pursuant to this section.

(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(1) A statement that the partnership was converted to a limited partnership from a partnership;

(2) Its current and former name; and

(3) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in §§ 41-401 to 41-499.25. (Apr. 9, 1997, D.C. Law 11-234, § 902, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-159.3. Conversion of limited partnership to partnership.

(a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(d) The conversion takes effect when the certificate of limited partnership is canceled.

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in § 41-153.6, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect. (Apr. 9, 1997, D.C. Law 11-234, § 903, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-159.4. Effect of conversion; entity unchanged.

(a) A partnership or limited partnership that has been converted pursuant to this subchapter is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) All property owned by the converting partnership or limited partnership remains vested in the converted entity;

(2) All obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(3) An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred. (Apr. 9, 1997, D.C. Law 11-234, § 904, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-159.5. Merger of partnerships.

(a) Pursuant to a plan of merger approved as provided in subsection (c) of this section, a partnership may be merged with one or more domestic or foreign partnerships or limited partnerships or other entities.

(b) The plan of merger must set forth:

(1) The name of each party to the merger;

(2) The name of the surviving entity into which the other entities will merge;

(3) Whether the surviving entity is a partnership, limited partnership, or other entity and the status of each partner;

(4) The terms and conditions of the merger;

(5) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and

(6) The street address of the surviving entity's chief executive office.

(c) The plan of merger must be approved:

(1) In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

(2) In the case of a limited partnership or other entity that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership or entity is organized and, in the absence of such a specifically applicable law, by all of the partners or members of the entity, notwithstanding a provision to the contrary in the partnership agreement or organizational documents of the limited partnership or other entity.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger takes effect on the later of:

(1) The approval of the plan of merger by all parties to the merger, as provided in subsection (c) of this section;

(2) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(3) Any effective date specified in the plan of merger. (Apr. 9, 1997, D.C. Law 11-234, § 905, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-159.6. Effect of merger.

(a) When a merger takes effect:

(1) The separate existence of every party to the merger, other than the surviving entity, ceases;

(2) All property owned by each of the merged parties to the merger vests in the surviving entity;

(3) All obligations of every party to the merger become the obligations of the surviving entity; and

(4) An action or proceeding pending against a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(b) The Mayor of the District of Columbia is the agent for service of process in an action or proceeding against a surviving entity to enforce an obligation of a domestic entity that is a party to a merger. The surviving entity shall promptly notify the Department of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the Department shall mail a copy of the process to the surviving entity.

(c) A partner of a partnership that is a party to a merger does not become personally liable as a result of the merger for a liability or obligation of another person that is a party to the merger unless the partner consents to becoming personally liable by action taken in connection with the specific plan of merger approved by the partner. A partner who remains in or enters a domestic or foreign partnership or other entity that survives a merger or that enters a domestic or foreign partnership or other entity created by the terms of the plan of merger shall be treated as an incoming partner in the new or surviving partnership as of the effective date of the merger for the purpose of determining the partner's liability for a debt or obligation of the other partnerships or entities that are parties to the merger and in which the partner was not associated. However, if the surviving entity is a partnership or limited partnership, except as otherwise provided in § 41-153.6, a partner of the surviving entity is liable for all obligations of the surviving entity incurred after the merger takes effect, provided that, if the partner is a limited partner, those may be satisfied only out of property of the entity.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving entity, the general partners of the partnership immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in § 41-158.7 or in the limited partnership statute of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under § 41-157.1 or another statute of the jurisdiction in which the party was formed specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under § 41-157.2 by an act of a general partner dissociated under this subsection, and the partner is liable under § 41-157.3 for transactions entered into by the surviving entity after the merger takes effect. (Apr. 9, 1997, D.C. Law 11-234, § 906, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-159.7. Statement of merger.

(a) After a merger, the surviving entity may file a statement that 1 or more entities have merged into the surviving entity.

(b) A statement of merger must contain:

- (1) The name of each party to the merger;
- (2) The name of the surviving entity into which the other entities were merged;
- (3) The street address of the surviving entity's chief executive office and of an office in the District, if any; and
- (4) The nature of the surviving entity.

(c) For the purposes of § 41-153.2, property of the surviving entity which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(d) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to § 41-151.5(c), stating the name of a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (b) of this section, operates with respect to the entities named to the extent provided in subsection (c) of this section.

(e) Any other statement or certificate required to be filed by applicable law must be filed. (Apr. 9, 1997, D.C. Law 11-234, § 907, 44 DCR 777.)

Section references. — This section is referred to in § 41-151.1.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-159.8. Exchange.

(a) One or more domestic or foreign partnerships may adopt a plan of exchange by which a domestic or foreign partnership or other entity acquires all of the outstanding partnership interests of 1 or more domestic partnerships in exchange for cash or securities of the acquiring domestic or foreign partnership or other entity, if:

(1) Each domestic or foreign partnership, the partnership interests of which are to be acquired under the plan of exchange, approves the plan of exchange in the manner prescribed in its partnership agreement; and

(2) Each acquiring domestic or foreign partnership or other entity takes all action that may be required by the laws of the state under which it was formed or incorporated and as required by its partnership agreement or other constituent documents in order to effect the exchange.

(b) Filing with the Department is not necessary to evidence or effect an interest exchange under this section for a domestic partnership that is a party to the interest exchange. When an interest exchange takes effect as provided in the plan of exchange:

(1) The partnership interest of each domestic partnership that is to be acquired under the plan of exchange is considered exchanged as provided in the plan of exchange;

(2) The former holders of the partnership interests exchanged under the plan of exchange are entitled only to the exchange rights provided in the plan of exchange; and

(3) The acquiring domestic or foreign partnership or other entity or entities are entitled to all rights, title, and interest with respect to the partnership interests so acquired and exchanged, subject to the provisions in the plan of exchange. (Apr. 9, 1997, D.C. Law 11-234, § 908, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-159.9. Nonexclusive.

This subchapter is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law. (Apr. 9, 1997, D.C. Law 11-234, § 909, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

Subchapter X. Limited Liability Partnership.

§ 41-160.1. Statement of qualification.

(a) A partnership may become a limited liability partnership pursuant to this section.

(b) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute, the vote necessary to amend those provisions.

(c) After the approval required by subsection (b) of this section, a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain:

(1) The name of the partnership;

(2) The street address of the partnership's chief executive office and, if different, the street address of an office in District of Columbia, if any;

(3) If the partnership does not have an office in District of Columbia, the name and street address of the partnership's agent for service of process;

(4) A statement that the partnership elects to be a limited liability partnership; and

(5) A deferred effective date, if any.

(d) The agent of a limited liability partnership for service of process must be an individual who is a resident of the District or other person authorized to do business in the District.

(e) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to § 41-151.5(d) or revoked pursuant to § 41-160.3.

(f) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c) of this section.

(g) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(h) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation. (Apr. 9, 1997, D.C. Law 11-234, § 1001, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-151.1, 41-152.1, and 41-153.6.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-160.2. Name.

The name of a limited liability partnership must end with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP," or "LLP". (Apr. 9, 1997, D.C. Law 11-234, § 1002, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-160.3. Biennial report.

(a) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in District of Columbia, shall file a biennial report with the Mayor which contains:

(1) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(2) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in District of Columbia, if any; and

(3) If the partnership does not have an office in District of Columbia, the name and street address of the partnership's current agent for service of process in accordance with § 41-160.4(c).

(b) A biennial report must be filed between January 1 and April 1 of each second year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in District of Columbia.

(c) The Mayor may revoke the statement of qualification of a partnership that fails to file a biennial report when due or pay the required filing fee. To do so, the Mayor shall provide the partnership at least 60 days written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or biennial report. The notice must specify the biennial report that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the biennial report is filed and the fee is paid before the effective date of the revocation.

(d) A revocation under subsection (c) of this section only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(e) A partnership whose statement of qualification has been revoked may apply to the Mayor for reinstatement within 2 years after the effective date of the revocation. The application must state:

(1) The name of the partnership and the effective date of the revocation; and

(2) That the ground for revocation either did not exist or has been corrected.

(f) A reinstatement under subsection (e) of this section relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred. (Apr. 9, 1997, D.C. Law 11-234, § 1003, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-160.1 and 41-161.2.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-160.4. Registration and fees.

(a) The Mayor may require that a limited liability partnership file a statement of qualification or statement of foreign qualification, or cancellation thereof or amendment thereto, and an biennial report, on forms provided by the Mayor. The Mayor may assess a fee for such filings in accordance with subsection (b) of this section.

(b) The proposed fee schedule shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed fee schedule shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1.

(c) Each limited liability partnership shall continuously maintain in the District of Columbia a registered agent for service of process on the partnership. The agent must be an individual who is a resident of the District of Columbia or a corporation that has the authority under its articles to act as a registered agent in the District of Columbia from whom the partnership has obtained written permission to serve as a registered agent. (Apr. 9, 1997, D.C. Law 11-234, § 1004, 44 DCR 777.)

Section references. — This section is referred to in §§ 41-151.1 and 41-160.3.

Legislative history of Law 11-234. — See note to § 41-151.1.

Subchapter XI. Foreign Limited Liability Partnership.

§ 41-161.1. Law governing foreign limited liability partnership.

(a) The laws under which a foreign limited liability partnership is formed govern relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of the District of Columbia.

(c) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in District of Columbia as a limited liability partnership. (Apr. 9, 1997, D.C. Law 11-234, § 1101, 44 DCR 777.)

Section references. — This section is referred to in § 41-151.6.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-161.2. Statement of foreign qualification.

(a) Before transacting business in District of Columbia, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(1) The name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose laws it is formed and ends with “Registered Limited Liability Partnership”, “Limited Liability Partnership”, “R.L.L.P.”, “L.L.P.”, “RLLP,” or “LLP”;

(2) The street address of the partnership’s chief executive office and, if different, the street address of an office of the partnership in District of Columbia, if any;

(3) If there is no office of the partnership in District of Columbia, the name and street address of the partnership’s agent for service of process; and

(4) A deferred effective date, if any.

(b) The agent of a foreign limited liability partnership for service of process must be an individual who is a resident of the District or other person authorized to do business in the District.

(c) The status of a partnership as a foreign limited liability partnership authorized to do business in the District is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to § 41-151.5(d) or revoked pursuant to § 41-160.3.

(d) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation. (Apr. 9, 1997, D.C. Law 11-234, § 1102, 44 DCR 777.)

Section references. — This section is referred to in § 41-151.1.

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-161.3. Effect of failure to qualify.

(a) A foreign limited liability partnership transacting business in District of Columbia may not maintain an action or proceeding in District of Columbia unless it has in effect a statement of foreign qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in District of Columbia.

(c) A limitation on personal liability of a partner of a foreign limited liability partnership are not waived solely by the foreign limited liability partnership's transacting business in District of Columbia without a statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in District of Columbia without a statement of foreign qualification, the Mayor is its agent for service of process with respect to a right of action arising out of the transaction of business in District of Columbia. (Apr. 9, 1997, D.C. Law 11-234, § 1103, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-161.4. Activities not constituting transacting business.

(a) Activities of a foreign limited liability partnership which do not constitute transacting business for purposes of this subchapter include:

- (1) Maintaining, defending, or settling an action or proceeding;
- (2) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside District of Columbia before they become contracts;

(7) Creating or acquiring indebtedness, with or without a mortgage or other security interest in property;

(8) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(9) Conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions; and

(10) Transacting business in interstate commerce.

(b) For purposes of this subchapter, the ownership in District of Columbia of income-producing real property or tangible personal property, other than property excluded under subsection (a) of this section, constitutes transacting business in the District of Columbia.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of the District of Columbia. (Apr. 9, 1997, D.C. Law 11-234, § 1104, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-161.5. Action by Corporation Counsel.

The Corporation Counsel of the District of Columbia may maintain an action to restrain a foreign limited liability partnership from transacting business in the District of Columbia in violation of this subchapter. (Apr. 9, 1997, D.C. Law 11-234, § 1105, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-161.6. Applicability of act to foreign and interstate commerce.

(a) A partnership or limited liability partnership organized and existing under this chapter may conduct its business, carry on its operations, and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country.

(b) It is the intent of the Council that the legal existence of limited liability partnerships organized in the District of Columbia be recognized outside the boundaries of the District of Columbia and that, subject to any reasonable requirement of registration, a District of Columbia limited liability partnership transacting business outside the District of Columbia be granted full faith and credit.

(c) The liability of partners in a limited liability partnership organized and existing under this chapter for the debts and obligations of the limited liability partnership, or for the acts or omission of other partners, employees, or

representatives of the limited liability partnership, shall at all times be determined solely and exclusively by the provisions of this chapter and any regulations promulgated hereunder. (Apr. 9, 1997, D.C. Law 11-234, § 1106, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

Subchapter XII. Miscellaneous Provisions.

§ 41-162.1. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. (Apr. 9, 1997, D.C. Law 11-234, § 1201, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-162.2. Savings clause.

This chapter does not affect an action or proceeding commenced or right accrued before this chapter takes effect. (Apr. 9, 1997, D.C. Law 11-234, § 1202, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

§ 41-162.3. Applicability.

(a) Before January 1, 1998, this chapter governs only a partnership formed:

(1) After April 9, 1997, except a partnership that is continuing the business of a dissolved partnership under § 41-140; and

(2) Before April 9, 1997, and which elects, as provided in subsection (c) of this section, to be governed by this chapter.

(b) On and after January 1, 1998, this chapter governs all partnerships.

(c) Before January 1, 1998, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement to be governed by this chapter. The provisions of this chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year before the partnership's election to be governed by this chapter only if the third party knows or has received notification of the partnership's election to be governed by this chapter. (Apr. 9, 1997, D.C. Law 11-234, § 1204, 44 DCR 777.)

Legislative history of Law 11-234. — See note to § 41-151.1.

CHAPTER 2. UNIFORM LIMITED PARTNERSHIPS.

Sec.

41-201 to 41-229. [Repealed].

§§ 41-201 to 41-229. "Limited partnership" defined; procedure for formation; filing and recordation of certificate; business which may be carried on; character of limited partner's contribution; liability — Restriction on partnership name; false statements in certificate; liability of limited partner to creditors; admission of additional limited partners; rights, powers, and liabilities of a general partner; rights of limited partner; status of a person erroneously believing himself a limited partner; one as both general and limited partner; loans and other business transactions with limited partner; relation of limited partners inter se; compensation of limited partner; withdrawal or reduction of limited partner's contribution; limited partner's right to dissolve partnership; liability of limited partner to partnership; waiver of liabilities; nature of limited partner's interest in partnership; assignment of limited partner's interest; rights of assignee; rights, powers, restrictions of substituted limited partner; effect of retirement, death, or insanity of a general partner; death of limited partner; liabilities; rights of creditors of limited partner; order of distribution of assets; cancellation or amendment of certificate; requirements for amendment and for cancellation of certificate; parties to action; rules of construction; rules for cases not provided for in this chapter; provisions for existing limited partnerships.

Repealed. Dec. 10, 1987, D.C. Law 7-49, § 1105, 34 DCR 6856.

Legislative history of Law 7-49. — Law 7-49 was introduced in Council and assigned Bill No. 7-227, which was referred to the Committee on Consumer and Regulatory Affairs.

The Bill was adopted on first and second readings on July 14, 1987 and September 29, 1987, respectively. Signed by the Mayor on October

16, 1987, it was assigned Act No. 7-82 and transmitted to both Houses of Congress for its review.

CHAPTER 3. DISSOLUTION AND PAYMENT OF DEBTS.

Sec.	Sec.
41-301. Composition or compromise of partner with creditors on dissolution — Effect on discharge.	41-303. Same — Other partners not discharged.
41-302. Same — Memorandum of exoneration; evidence as bar of creditor's right of recovery.	41-304. Same — Partners' right of contribution.

§ 41-301. Composition or compromise of partner with creditors on dissolution — Effect on discharge.

Where a partnership is dissolved, by mutual consent or otherwise, any partner may make a separate composition or compromise with any creditor of the partnership; and such a composition or compromise shall be a full and effectual discharge to the debtor who makes the same, and to him only, of and from all and every liability to the creditor with whom the same is made, according to the terms thereof. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1494; 1973 Ed., § 41-201.)

Cross references. — As to separate compromise by one of several joint debtors, see § 16-2106.

§ 41-302. Same — Memorandum of exoneration; evidence as bar of creditor's right of recovery.

Every such debtor who makes such composition or compromise may take from the creditor with whom he makes the same a note or memorandum, in writing, exonerating him from all and every individual liability incurred by reason of his connection with the partnership, which note or memorandum may be given in evidence by such debtor, in bar of such creditor's right of recovery against him; and if such liability be by judgment, then, on the production and filing with the clerk of the notes or memorandum, the clerk shall enter the judgment as released by the plaintiff as far as the compromising debtor is concerned. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1495; 1973 Ed., § 41-202.)

§ 41-303. Same — Other partners not discharged.

Such compromise or composition with an individual member of a firm shall not be held to discharge the other partners, nor shall it impair the right of the creditor to proceed against such members of the partnership as have not been discharged; and the members of the partnership so proceeded against shall be permitted to set off any demand against the creditor which could have been set off had the suit been brought against all the individuals composing the firm. Nor shall the compromise or discharge of an individual member of a firm prevent the other members of the firm from availing themselves of any defense that would have been available had this title not been passed, except that they shall not set up the discharge of one individual as a discharge of the other

partners, unless it appear that all were intended to be discharged; but the discharge of any such partner shall be deemed a payment to the creditor equal to the proportionate interest of the partner discharged in the partnership concern. (Mar. 3, 1901, 31 Stat. 1414, ch. 854, § 1496; 1973 Ed., § 41-203.)

Proportion of liability. — The fact that former partners may also be liable for some or all of the remaining part of the claim following their discharge should not change the propor-

tion discharged. *Tatge v. Chandler* (In re Judiciary Tower Assocs.), 175 B.R. 796 (Bankr. D.D.C. 1994).

§ 41-304. Same — Partners' right of contribution.

Such compromise or composition of a member of a firm with a creditor of such firm shall in nowise affect the right of the other partners to call on the member who makes it for his ratable proportion of any partnership debt which they may be compelled to pay. (Mar. 3, 1901, 31 Stat. 1415, ch. 854, § 1497; 1973 Ed., § 41-204.)

Cited in *In re Heron, Burchette, Ruckert & Rothwell*, 148 B.R. 660 (Bankr. D.D.C. 1992).

UNIFORM LIMITED PARTNERSHIP ACT OF 1987

CHAPTER 4. UNIFORM LIMITED PARTNERSHIP ACT OF 1987.

Subchapter I. General Provisions.

Sec.

- 41-401. Definitions.
- 41-402. Name.
- 41-403. Reservation of name.
- 41-404. Principal office and registered agent.
- 41-405. Records to be kept.
- 41-406. Nature of business.
- 41-407. Business transactions of partner with partnership.
- 41-408. Applicability of Uniform Partnership Act.
- 41-409. Indemnification.

Subchapter II. Formation, Certificate of Limited Partnership.

- 41-421. Certificate of limited partnership.
- 41-422. Amendment to certificate of limited partnership.
- 41-423. Cancellation of certificate of limited partnership.
- 41-424. Execution of certificate.
- 41-425. Amendment or cancellation by judicial act.
- 41-426. Filing with the Department.
- 41-427. Liability for false statement in certificate.
- 41-428. Merger and consolidation.

Subchapter III. Limited Partners.

- 41-431. Admission of limited partners.
- 41-432. Voting.
- 41-433. Liability to third parties.
- 41-434. Person erroneously believing himself or herself a limited partner.
- 41-435. Information.

Subchapter IV. General Partners.

- 41-441. Admission of additional general partners.
- 41-442. Ceasing to be a general partner.
- 41-443. Powers and liabilities.
- 41-444. Contributions by general partner.
- 41-445. Voting.

Subchapter V. Finance.

- 41-451. Form of contribution.
- 41-452. Liability for contribution.
- 41-453. Sharing of profits and losses.
- 41-454. Sharing of distributions.

Subchapter VI. Distributions and Withdrawal

- 41-461. Interim distributions.
- 41-462. Withdrawal of general partner.

Sec.

- 41-463. Withdrawal of limited partner.
- 41-464. Distribution upon withdrawal.
- 41-465. Distribution in kind.
- 41-466. Status as creditor.
- 41-467. Limitations on return of contributions.
- 41-468. Liability upon return of contribution.

Subchapter VII. Assignment of Partnership Interests

- 41-471. Nature of partnership interest.
- 41-472. Assignment of partnership interest.
- 41-473. Right of assignee to become limited partner.
- 41-474. Death, incompetency, insolvency, or termination of a general partner.
- 41-475. Rights of creditor.

Subchapter VIII. Dissolution.

- 41-481. Events of dissolution.
- 41-482. Judicial dissolution.
- 41-483. Winding up.
- 41-484. Distribution of assets.

Subchapter IX. Foreign Limited Partnerships

- 41-491. Law governing foreign limited partnerships.
- 41-492. Certificate of authority.
- 41-493. Issuance of certificate of authority.
- 41-494. Name.
- 41-495. Changes and amendments.
- 41-496. Cancellation of certificate of authority.
- 41-497. Doing business without a certificate of authority.
- 41-498. Doing business.
- 41-499. Assent to laws of the District.
- 41-499.1. Compliance with title is not consent to suit.

Subchapter X. Derivative Actions.

- 41-499.11. Right of action.
- 41-499.12. Proper plaintiff.
- 41-499.13. Pleading.
- 41-499.14. Expenses.

Subchapter XI. Miscellaneous.

- 41-499.21. Construction and application.
- 41-499.22. Rules; fees; notice.
- 41-499.23. Penalties.
- 41-499.24. Action by Corporation Counsel.
- 41-499.25. Transition.
- 41-499.26. Conversion of limited partnership to limited liability partnership.

Subchapter I. General Provisions.

§ 41-401. Definitions.

For purposes of this chapter, the term:

(1) "Certificate of good standing" means any documentation provided by the jurisdiction under which the foreign limited partnership is organized verifying its formation.

(2) "Consent" means a writing consenting to a specified act or event.

(3) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, that a partner contributes as capital to a limited partnership in that person's capacity as a partner.

(4) "Department" means the Department of Consumer and Regulatory Affairs.

(5) "Distribution" means any cash or property that a limited partnership distributes to a partner in that person's capacity as a partner.

(6) "District" means the District of Columbia.

(7) "Foreign limited partnership" means a partnership formed under the laws of any state other than the District or under the laws of a foreign country and having as partners one or more general partners and one or more limited partners.

(8) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and has been named as a general partner in the certificate of limited partnership or similar instrument of any state or foreign country under which the limited partnership is organized.

(9) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with § 41-431 or, in the case of a foreign limited partnership, in accordance with the laws of the state or foreign country under which the limited partnership is organized.

(10) "Limited partnership" and "domestic limited partnership" mean a partnership formed by 2 or more persons under the laws of the District and having one or more general partners and one or more limited partners.

(11) "Partner" means a limited or general partner.

(12) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(13) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

(14) "Person" means a natural person, partnership, domestic limited partnership, foreign limited partnership, trust, estate, association, or corporation.

(15) "Principal office" means the place in the District recorded with the Department as the principal office of the partnership pursuant to § 41-404.

(16) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(17) “Uniform Limited Partnership Act” means the Uniform Limited Partnership Act approved September 28, 1962 (76 Stat. 655, D.C. Code § 41-201 et seq.). (Dec. 10, 1987, D.C. Law 7-49, § 101, 34 DCR 6856.)

Section references. — This section is referred to in § 29-1301 and 41-159.1.

Legislative history of Law 7-49. — Law 7-49, “Uniform Limited Partnership Act of 1987,” was introduced in Council and assigned Bill No. 7-227, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 14, 1987 and September 29, 1987,

respectively. Signed by the Mayor on October 16, 1987, it was assigned Act No. 7-82 and transmitted to both Houses of Congress for its review.

References in text. — The Uniform Limited Partnership Act, § 41-201 et seq., referred to in paragraph (17) of this section, was repealed by D.C. Law 7-49, § 1105.

§ 41-402. Name.

(a) The name of each limited partnership as set forth in its certificate of limited partnership:

(1) Shall contain the words “limited partnership” or the abbreviation “L.P.”;

(2) Shall not contain the name of a limited partner unless:

(A) It is also the name of a general partner; or

(B) The business of the limited partnership had been carried on under that name before the admission of that limited partner; and

(3) Shall not be the same as or deceptively similar to:

(A) The name of any corporation or limited partnership organized under the laws of the District;

(B) The name of any foreign corporation or foreign limited partnership registered or qualified to do business in the District; or

(C) Any name that is reserved or registered under § 29-309, § 29-590, or § 41-403.

(b) Every 3 years following the year in which the limited partnership is formed, each limited partnership shall file a statement on a form provided by the Department affirming that the limited partnership is actively engaged in the business for which it was formed. A failure to file the affirmation on time shall result in forfeiture of the right to use the name set forth in the certificate but shall not otherwise affect the status, rights, or obligations of the limited partnership or any of its partners under this chapter. (Dec. 10, 1987, D.C. Law 7-49, § 102, 34 DCR 6856.)

Section references. — This section is referred to in §§ 41-159.1 and 41-433.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-403. Reservation of name.

(a) The exclusive right to use a specified name for a domestic or foreign limited partnership may be reserved by:

(1) A person who intends to organize a domestic limited partnership;

(2) A domestic limited partnership that proposes to change its name;

(3) A foreign limited partnership that intends to register to do business in the District; or

(4) A foreign limited partnership registered to do business in the District that proposes to change its name.

(b) A person may reserve a specified name by filing a signed application with the Department. If the Department finds that the name is available for use by a limited partnership, the Department shall reserve the name for 60 days for the exclusive use of the applicant. If the applicant, at the conclusion of the 60-day period, has proceeded with the plans stated in the application for reservation of a name, the Department shall reserve the name for the limited partnership for the duration of its lawful operations in the District. If the applicant, at the conclusion of the 60-day period, has not proceeded with the plans stated in the application for reservation of a name, the Department shall cancel the reservation and make the name available to the next applicant who properly requests it.

(c) The exclusive right to use a reserved name may be transferred to another person by filing with the Department a notice of the transfer, that specifies the name and address of the transferee and is signed by the applicant for whom the name was reserved.

(d) A foreign limited partnership may register a name, other than the name under which it was organized in another state or foreign country, if the name under which it was organized is being used by another business entity to transact business in the District. (Dec. 10, 1987, D.C. Law 7-49, § 103, 34 DCR 6856.)

Section references. — This section is referred to in §§ 41-159.1 and 41-402.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-404. Principal office and registered agent.

Each limited partnership shall continuously maintain in the District:

(1) An office that may but need not be a place of its business in the District; and

(2) A registered agent for service of process on the limited partnership, who shall be an individual resident of the District, a domestic corporation, or a foreign corporation authorized to do business in the District, from whom the limited partnership has obtained written permission to serve as a registered agent. (Dec. 10, 1987, D.C. Law 7-49, § 104, 34 DCR 6856.)

Section references. — This section is referred to in §§ 41-159.1, 41-401, and 41-499.25.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-405. Records to be kept.

(a) Each limited partnership shall keep at its principal office or at its principal place of business if different from its principal office:

(1) A current list of the full names and last known home or business addresses of each partner, separately identifying the general partners and the limited partners;

(2) A copy of the certificate of limited partnership together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(3) Copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years;

(4) Copies of then effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years; and

(5) Unless contained in a written partnership agreement, written records setting forth:

(A) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

(B) The times at which or events on the occurrence of which any additional contributions agreed to be made by each partner are to be made;

(C) Any right of a partner to receive, or of a general partner to make, distributions to a partner that include a return of all or any part of the partner's contribution; and

(D) Any events upon the occurrence of which the limited partnership is to be dissolved and its affairs wound up.

(b) These records are subject to inspection and copying at the reasonable request and, except as otherwise provided in this chapter, at the expense of any partner during ordinary business hours. (Dec. 10, 1987, D.C. Law 7-49, § 105, 34 DCR 6856.)

Section references. — This section is referred to in §§ 41-159.1, 41-452, 41-453, and 41-468.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-406. Nature of business.

A limited partnership may carry on any business that a partnership without limited partners may carry on. (Dec. 10, 1987, D.C. Law 7-49, § 106, 34 DCR 6856.)

Section references. — This section is referred to in § 41-159.1.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-407. Business transactions of partner with partnership.

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect to a person who is not a partner. (Dec. 10, 1987, D.C. Law 7-49, § 107, 34 DCR 6856.)

Section references. — This section is referred to in § 41-159.1.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-408. Applicability of Uniform Partnership Act.

In any case not provided for in this chapter, the provisions of Chapter 1 of this title, shall govern. (Dec. 10, 1987, D.C. Law 7-49, § 108, 34 DCR 6856.)

Section references. — This section is referred to in § 41-159.1.

Legislative history of Law 7-49. — See note to § 41-401.

Short title. —

§ 41-409. Indemnification.

Subject to standards and restrictions, if any, set forth in its partnership agreement, a limited partnership may indemnify any partner or other person from and against any and all claims and demands whatsoever, except that indemnification shall not be permitted if a partner has been adjudged liable for personal benefits improperly received, willful misconduct, recklessness, or gross negligence with respect to the business of the partnership. (Dec. 10, 1987, D.C. Law 7-49, § 109, 34 DCR 6856.)

Section references. — This section is referred to in § 41-159.1.

Legislative history of Law 7-49. — See note to § 41-401.

Subchapter II. Formation, Certificate of Limited Partnership.

§ 41-421. Certificate of limited partnership.

(a) In order to form a limited partnership, a certificate of limited partnership shall be filed with the Department that sets forth:

- (1) The name of the limited partnership;
- (2) The address of the principal office and the name and address of the registered agent;
- (3) The written permission of the registered agent to serve as registered agent;
- (4) The name and the business address of each general partner;
- (5) The latest date upon which the limited partnership is to dissolve; and
- (6) Any other matters the Department considers appropriate.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership with the Department or at any later time specified in the certificate of limited partnership if, in either case, there has been compliance with the requirements of this chapter. (Dec. 10, 1987, D.C. Law 7-49, § 201, 34 DCR 6856.)

Section references. — This section is referred to in §§ 41-159.1, 41-426, and 41-492.

Legislative history of Law 7-49. — See note to § 41-401.

Purposes of revised Act. — One of the purposes of the Revised Uniform Limited Partnership Act (ULPA) was to clearly delineate the

time at which parties become partners, something not explicit in the former ULPA. *Reiman v. International Hospitality Group, Ltd.*, App. D.C., 614 A.2d 925 (1992).

Cited in *Aronoff v. Lenkin Co.*, App. D.C., 618 A.2d 669 (1992).

§ 41-422. Amendment to certificate of limited partnership.

(a) A certificate of limited partnership is amended by filing a certificate of amendment with the Department that sets forth:

- (1) The name of the limited partnership;
- (2) The amendment to the certificate of limited partnership; and
- (3) The date of issuance of the certificate of amendment.

(b) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any facts described have changed, making the certificate of limited partnership inaccurate in any material respect, shall promptly amend the certificate of limited partnership. A certificate of limited partnership may be amended at any time for any other proper purpose.

(c) A certificate of amendment or judicial decree of amendment shall be effective when filed with the Department or at any later time specified in the certificate of amendment or judicial decree of amendment. (Dec. 10, 1987, D.C. Law 7-49, § 202, 34 DCR 6856.)

Section references. — This section is referred to in §§ 41-159.1, 41-426, and 41-492.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-423. Cancellation of certificate of limited partnership.

(a) A certificate of limited partnership shall be cancelled on the dissolution and the commencement of winding up of the partnership, or at the time that there are no limited partners. A certificate of cancellation shall be filed with the Department and shall set forth:

- (1) The name of the limited partnership;
- (2) The date of the filing of the certificate of limited partnership;
- (3) The reason for filing the certificate of cancellation;
- (4) If the certificate of cancellation is not to be effective on the date of filing of the certificate of cancellation, a date certain subsequent to the date of filing; and

(5) Any other information the Department considers appropriate.

(b) Unless otherwise provided in this chapter or in the certificate of limited partnership, a certificate of cancellation or a judicial decree of cancellation is effective when filed with the Department. (Dec. 10, 1987, D.C. Law 7-49, § 203, 34 DCR 6856.)

Section references. — This section is referred to in §§ 41-159.1, 41-426, and 41-492.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-424. Execution of certificate.

(a) Each certificate required by this chapter to be filed with the Department shall contain a legend indicating that the making of a false statement is punishable by criminal penalties under § 22-2514, and shall be executed in the following manner:

(1) A certificate of limited partnership shall be signed by all general partners;

(2) A certificate of amendment shall be signed by at least one general partner and by each other general partner designated in the certificate of amendment as a new general partner; and

(3) A certificate of cancellation shall be signed by all general partners or, if there is no general partner, by a majority of the limited partners.

(b) Any person may sign a certificate by an attorney in fact. (Dec. 10, 1987, D.C. Law 7-49, § 204, 34 DCR 6856.)

Section references. — This section is referred to in §§ 41-159.1, 41-426, and 41-492.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-425. Amendment or cancellation by judicial act.

If the designated person required by the certificate of limited partnership to execute a certificate of amendment or cancellation fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Superior Court of the District of Columbia to direct the execution of the certificate of amendment or cancellation. If the court finds that it is proper for the certificate of amendment or cancellation to be executed and that the designee has failed or refused to execute the certificate of amendment or cancellation, the court shall order the Department to record a certificate of amendment or cancellation. (Dec. 10, 1987, D.C. Law 7-49, § 205, 34 DCR 6856.)

Section references. — This section is referred to in §§ 41-159.1, 41-426, and 41-427.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-426. Filing with the Department.

(a) An executed copy of each certificate required by this chapter or of any judicial decree of amendment or cancellation shall be filed with the Department. The Department shall not accept for recordation any certificate or decree that does not meet the requirements of §§ 41-421 through 41-425. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. The Department shall not accept for recordation any certificate, decree, qualification, registration, change of registered agent or principal office, report, service of process or notice, or other document until all required fees have been paid to the Department.

(b) When the Department accepts for recordation any certificate, the Department shall:

(1) Endorse on the document the date of its acceptance for record;

(2) Record the document; and

(3) Issue a certificate that states that the document was accepted for recordation by the Department and the date of acceptance for record. (Dec. 10, 1987, D.C. Law 7-49, § 206, 34 DCR 6856.)

Section references. — This section is referred to in § 41-159.1.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-427. Liability for false statement in certificate.

(a) If any certificate contains a false statement, one who suffers loss by reasonable reliance on the statement may recover damages for the loss from:

(1) Any person who executes the certificate, or causes another to execute it on that person's behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

(2) Any general partner who thereafter knows or should have known that any fact described in the certificate has changed, making the statement inaccurate in any material respect, if that general partner had sufficient time to amend or cancel the certificate or to file a petition under § 41-425 before the statement was relied upon.

(b) A person is not liable for failing to cause the amendment or cancellation of a certificate or failing to file a petition under § 41-425 pursuant to subsection (a) of this section if the certificate of amendment, certificate of cancellation, or petition is filed within 30 days of the date that person knew or should have known that the statement in the certificate was inaccurate in any material respect. (Dec. 10, 1987, D.C. Law 7-49, § 207, 34 DCR 6856.)

Section references. — This section is referred to in §§ 41-159.1, 41-433, and 41-495.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-428. Merger and consolidation.

(a) For the purposes of this section, the term "business entity" shall include a corporation, a limited liability company, a partnership or an unincorporated business, a business trust or association, a real estate investment trust, a common law trust, or a Massachusetts trust.

(b) Unless the partnership agreement provides otherwise, a limited partnership may merge into or consolidate with one or more domestic or foreign limited partnerships or into one or more District or foreign business entities, and one or more domestic or foreign limited partnerships or one or more District or foreign business entities may merge with or consolidate into it.

(c)(1) A merger or consolidation shall be approved by a limited partnership in the manner provided by this section.

(2) A foreign limited partnership or a business entity that is a party to the merger or consolidation shall have the merger or consolidation advised, authorized, and approved in the manner and by the vote required by its partnership agreement or charter and by the laws of the jurisdiction where it is organized.

(d) Unless the partnership agreement requires a greater percentage in interest, two-thirds of the general partners of each limited partnership proposing to merge or consolidate shall:

(1) Approve the proposed transaction; and

(2) Submit the proposed transaction to the limited partners for their consideration.

(e) Unless the partnership agreement requires a greater percentage in interest, the proposed merger or consolidation shall be approved by two-thirds of the limited partners of each limited partnership that is a party to the proposed transaction.

(f) Upon approval, articles of merger or consolidation shall be duly executed in duplicate, verified by each party to the merger or consolidation, and set forth:

(1) The plan of merger or consolidation; and

(2) As to each party to the merger or consolidation, a statement that the plan of merger or consolidation was approved in accordance with the entity's articles of incorporation or partnership agreement and applicable law.

(g) Articles of merger or consolidation shall be filed with the Department. If the Department finds that the articles of merger or consolidation conform to law and when all fees required by this chapter have been paid, the Department shall issue a certificate of merger or consolidation, noting the date of acceptance of the articles for recordation by the Department. The duplicate original of the articles of merger or consolidation shall be attached to the certificate of merger or consolidation, which shall be delivered to the surviving or new entity or its representative.

(h) Each limited partner of a limited partnership objecting to a merger or consolidation of the limited partnership shall have the same rights as an objecting stockholder of a District corporation under § 29-373 ("Business Corporations Act"), and under the same procedures, except that if no meeting of limited partners is held, the limited partner shall file with the partnership his or her written objection to the merger or consolidation during the time that approval of limited partners of the proposed transaction is being sought.

(i) If the successor in a merger or consolidation is a limited partnership or District business entity, a merger or consolidation shall be effective on the later of:

(1) The date the Department accepts the articles of merger or consolidation for recordation; or

(2) The date established under the articles of merger or consolidation not to exceed 30 days after the articles of merger or consolidation are accepted for recordation.

(j) If the successor in a merger or consolidation is a foreign business entity or a foreign limited partnership, the merger or consolidation shall be effective on the later of the date specified by the law of the jurisdiction where the successor is organized or the date the Department accepts the articles of merger or consolidation for recordation.

(k) A foreign successor in a merger or consolidation shall file for recordation with the Department a certificate from the jurisdiction where it is organized that certifies the date the articles of merger or consolidation were filed. Failure to file this certificate does not invalidate the merger or consolidation.

(l)(1) Consummation of a merger or consolidation shall mean that the separate existence of each limited partnership and business entity that is a party to the articles, except the successor, ceases to exist.

(2) The limited partnership interests or shares of each party to the articles of merger or consolidation that are to be converted or exchanged under the terms of the articles of merger or consolidation shall cease to exist, subject to the rights of an objecting limited partner or an objecting stockholder under the Business Corporations Act or any comparable foreign statute.

(3) In addition to any other purposes and powers set forth in the articles of merger or consolidation, if the articles of merger or consolidation provide, the successor shall have the purposes and powers of each party to the articles of merger or consolidation.

(4) The assets of each party to the articles of merger or consolidation shall transfer to, vest in, and devolve on the successor without further act or deed. Confirmatory deeds, assignments, or similar instruments to evidence the transfer may be executed and delivered at any time in the name of the transferring party to the articles of merger or consolidation by its last acting general partners or officers or by the appropriate general partners or officers of the successor.

(5) The successor shall be liable for all the debts and obligations of each nonsurviving party to the articles of merger or consolidation. An existing claim, action, or proceeding pending by or against any nonsurviving party to the articles of merger or consolidation may be prosecuted to judgment as if the merger or consolidation had not taken place or, on motion of the successor or any party, the successor may be substituted as a party and the judgment against the nonsurviving party to the articles of merger or consolidation constitutes a lien on the property of the successor. A merger or consolidation shall not impair the rights of creditors or liens on the property of any limited partnership or corporation party to the articles of merger or consolidation.

(m) If the surviving or new entity is to be governed by the laws of any jurisdiction other than the District and intends to do business in the District, it shall comply with the provisions of District law with respect to foreign limited partnerships or foreign business entities with respect to business it conducts in the District. The surviving or new entity shall file with the Department:

(1) An agreement that it may be served with process in the District in any proceeding for the enforcement of any obligations of any limited partnership or business entity that is a party to the merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting limited partner or stockholder of any District limited partnership or corporation against the surviving or new entity;

(2) An irrevocable appointment of the Department as its agent to accept service of process in any proceeding in accordance with paragraph (1) of this subsection;

(3) An agreement that it will promptly pay to the dissenting limited partners or stockholder of any limited partnership or District corporation the amount, if any, to which they shall be entitled under the provisions of the Business Corporations Act with respect to the rights of dissenting limited partners or stockholders; and

(4) The address of the registered agent to which the Department may mail a copy of any process against the surviving or new entity that may be served on the surviving or new entity.

(n) No member of a domestic limited liability company that is a party to a merger or consolidation will, as a result of the merger or consolidation, become personally liable for the liabilities or obligations of any other person or entity unless that member approves the agreement of merger or consolidation or otherwise consents to becoming personally liable. (Dec. 10, 1987, D.C. Law 7-49, § 208, 34 DCR 6856; Sept. 10, 1992, D.C. Law 9-144, § 5, 39 DCR 4863; July 23, 1994, D.C. Law 10-138, § 79, 41 DCR 3010; Apr. 9, 1997, D.C. Law 11-234, § 1205(1), 44 DCR 777.)

Section references. — This section is referred to in § 41-159.1.

Effect of amendments. — D.C. Law 11-234, effective Jan. 1, 1998, inserted “a partnership or” in (a).

Legislative history of Law 7-49. — See note to § 41-401.

Legislative history of Law 9-144. — Law 9-144, the “District of Columbia Corporation Law Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-64, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 6, 1992, and June 2, 1992, respectively. Signed by the Mayor on June 19, 1992, it was assigned Act No. 9-224 and transmitted to both Houses of Congress for its review. D.C. Law 9-144 became effective on September 10, 1992.

Legislative history of Law 10-138. — Law 10-138, the “Limited Liability Company Act of 1994,” was introduced in Council and assigned

Bill No. 10-277, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-243 and transmitted to both Houses of Congress for its review. D.C. Law 10-138 became effective on July 23, 1994.

Legislative history of Law 11-234. — Law 11-234, the “Uniform Partnership Act of 1996,” was introduced in Council and assigned Bill No. 11-344, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-494 and transmitted to both Houses of Congress for its review. D.C. Law 11-234 became effective on April 9, 1997.

Subchapter III. Limited Partners.

§ 41-431. Admission of limited partners.

(a) A person becomes a limited partner on the later of:

(1) The date the certificate of limited partnership is filed; or

(2) The date stated in the records of the limited partnership as the date that person becomes a limited partner.

(b) After the filing of the certificate of limited partnership, a person may be admitted as an additional limited partner:

(1) By acquiring a partnership interest directly from the limited partnership on compliance with the partnership agreement or with the consent of all partners; or

(2) By an assignment of a partnership interest of a partner who has the power, under subchapter VII of this chapter, to grant the assignee the right to become a limited partner upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power. (Dec. 10, 1987, D.C. Law 7-49, § 301, 34 DCR 6856.)

Section references. — This section is referred to in § 41-159.1 and 41-401.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-432. Voting.

Subject to § 41-433, the partnership agreement may grant to all or a specified group of limited partners the right to vote, on a per capita or other basis, on any matter. (Dec. 10, 1987, D.C. Law 7-49, § 302, 34 DCR 6856.)

Section references. — This section is referred to in § 41-159.1.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-433. Liability to third parties.

(a) Except as provided in § 41-427 and in subsection (c) of this section, a limited partner shall not be liable for the obligations of a limited partnership unless he or she is also a general partner or, in addition to the exercise of his or her rights and powers as a limited partner, he or she participates in the control of the business. If the limited partner does participate in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) of this section by virtue of his or her:

(1) Acting as a contractor for or an agent or employee of the limited partnership or of a general partner, or serving as an officer, director, or stockholder of a corporate general partner;

(2) Consulting with or advising a general partner with respect to any matter, including the business of the limited partnership;

(3) Acting as a surety, guarantor, or endorser for the limited partnership, to guarantee or assume 1 or more specific obligations of the limited partnership or to provide collateral for the limited partnership;

(4) Calling, requesting, attending, or participating at a meeting of the partners or the limited partners;

(5) Winding up a limited partnership pursuant to § 41-483;

(6) Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(7) Serving on a committee of the limited partnership or the limited partners;

(8) Exercising other powers as are stated in the partnership agreement; or

(9) Exercising any right or power granted or permitted to limited partners under this chapter and not specifically enumerated in this subsection.

(c) A limited partner who knowingly permits his or her name to be used in the name of the limited partnership, except under circumstances permitted by § 41-402, shall be liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner. (Dec. 10, 1987, D.C. Law 7-49, § 303, 34 DCR 6856; July 25, 1995, D.C. Law 11-30, § 9, 42 DCR 1547.)

Section references. — This section is referred to in §§ 41-159.1 and 41-432. = —

Legislative history of Law 7-49. — See note to § 41-401.

Legislative history of Law 11-30. — Law 11-30, the “Technical Amendments Act of 1995,” was introduced in Council and assigned Bill No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and

second readings on February 7, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

Cited in *Bingham v. Goldberg, Marchesano, Kohlman, Inc.*, App. D.C., 637 A.2d 81 (1994).

§ 41-434. Person erroneously believing himself or herself a limited partner.

(a) Except as provided in subsection (b) of this section, a person who makes a contribution to a partnership and erroneously but in good faith believes that he or she has become a limited partner in the partnership is not a general partner in the partnership and is not bound by its obligations by reason of making the contribution, receiving distributions from the partnership, or exercising any rights of a general partner, if, on ascertaining the mistake:

(1) In the case of a person who wishes to be a limited partner, he or she causes an appropriate certificate to be executed and filed to show that he or she is not a general partner; or

(2) In the case of a person who wishes to withdraw as a partner from the partnership, he or she executes and files a document with the Department declaring that he or she withdraws under this section.

(b) A person who makes a contribution under the circumstances described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the partnership prior to the occurrence of either of the events described in subsection (a)(1) or (a)(2) of this section:

(1) If that person knew or reasonably should have known either that no certificate has been filed to show that he or she is not a general partner or that the certificate inaccurately refers to him or her as a general partner; or

(2) If the third party reasonably relied upon the fact that the person was a general partner at the time of the transaction. (Dec. 10, 1987, D.C. Law 7-49, § 304, 34 DCR 6856.)

Section references. — This section is referred to in § 41-159.1.

Legislative history of Law 7-49. — See note to § 41-401.

Origin of subsection (b). — Subsection (b) is not found in the standard Revised Uniform

Limited Partnership Act, but was apparently included as part of the modifications recommended by the D.C. Bar. *Reiman v. International Hospitality Group, Ltd.*, App. D.C., 614 A.2d 925 (1992).

§ 41-435. Information.

(a) Each limited partner has the right to obtain from the general partners upon reasonable demand and at partnership expense:

(1) True and full information regarding the state of the business and financial condition of the limited partnership;

(2) A copy of the limited partnership’s federal, state, and local income tax returns for each year; and

(3) Other information regarding the affairs of the limited partnership as is just and reasonable.

(b) Any limited partner or group of limited partners owning 10% or more of the limited partnership's interests shall, upon written request to the general partners, have the right, at the limited partner's or partners' own expense and during ordinary business hours, to inspect the books and records of the limited partnership. (Dec. 10, 1987, D.C. Law 7-49, § 305, 34 DCR 6856.)

Section references. — This section is referred to in § 41-159.1.

Legislative history of Law 7-49. — See note to § 41-401.

Subchapter IV. General Partners.

§ 41-441. Admission of additional general partners.

Except as otherwise provided in writing in the partnership agreement, after the filing of the certificate of limited partnership, additional general partners may be admitted with the consent of all general partners and a majority in interest of limited partners, determined on the basis of the sharing of profits and losses. (Dec. 10, 1987, D.C. Law 7-49, § 401, 34 DCR 6856.)

Section references. — This section is referred to in § 41-159.1.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-442. Ceasing to be a general partner.

A person ceases to be a general partner of a limited partnership upon the occurrence of any of the following events:

(1) The person's withdrawal from the limited partnership as provided in § 41-462;

(2) The person's removal as a general partner in accordance with the partnership agreement;

(3) Unless otherwise provided in writing in the partnership agreement or with the consent of all partners, the person's:

(A) Making an assignment for the benefit of creditors;

(B) Filing a voluntary petition in bankruptcy;

(C) Being adjudged insolvent or having entered against him or her an order for relief in any bankruptcy proceeding or any order of relief in an insolvency proceeding;

(D) Filing a petition or answer seeking for himself or herself any reorganization, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(E) Filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or her in any proceeding of reorganization, composition, readjustment, liquidation, dissolution, or similar relief under any law or regulation;

(F) Seeking, consenting to, or acquiescing in the appointment of a trustee or receiver, or in the liquidation by the general partner of any substantial part of his or her properties;

(4) Unless otherwise provided in writing in the partnership agreement or with the consent of all partners:

(A) The 121st day of a proceeding seeking reorganization, composition, readjustment, liquidation, dissolution, or similar relief under law or regulation against a general partner; or

(B) The expiration of 120 days from the date of appointment of a trustee, receiver, or liquidator for the general partner or any substantial part of the general partner's properties without his or her agreement, which appointment is not vacated or stayed for 120 days or, if the appointment is stayed, for 120 days after the expiration of the stay during which period the appointment is not vacated;

(5) In the case of a general partner who is an individual, the individual's death or the individual's adjudication by a court of competent jurisdiction as incompetent to manage his or her person or property;

(6) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust, but not the substitution of a new trustee;

(7) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(8) In the case of a general partner that is a corporation, the dissolution of the corporation or the revocation of its charter; or

(9) In the case of a general partner that is an estate, the distribution by the personal representative of the estate's entire interest in the partnership. (Dec. 10, 1987, D.C. Law 7-49, § 402, 34 DCR 6856.)

Section references. — This section is referred to in §§ 41-159.1 and 41-474.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-443. Powers and liabilities.

(a) Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership shall have the rights and powers and is subject to the restrictions and liabilities of a partner in a partnership without limited partners.

(b) A general partner's liability to persons other than his or her partners or the partnership shall not be limited in the partnership agreement. (Dec. 10, 1987, D.C. Law 7-49, § 403, 34 DCR 6856.)

Section references. — This section is referred to in § 41-159.1.

Legislative history of Law 7-49. — See note to § 41-401.

No personal liability shown. — Where the letter of agreement was signed by an individual identifying himself as the corporate president and "for" a limited partnership, and where the individual did not misrepresent his agency, the

liability for the breach ran to the limited partnership, and to the corporation as its general partner, but not to the president individually. *Shalom Baranes Assoc. v. 900 F St. Corp.*, 940 F. Supp. 1 (D.D.C. 1996).

Cited in *Federal Kemper Life Assurance Co. v. Wolensky's Ltd. Partnership*, 163 B.R. 615 (Bankr. D.D.C. 1993).

§ 41-444. Contributions by general partner.

A general partner may make contributions to the limited partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in the profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, shall have the powers and is subject to the restrictions of a limited partner to the extent of his or her participation in the limited partnership as a limited partner. (Dec. 10, 1987, D.C. Law 7-49, § 404, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-445. Voting.

The partnership agreement may grant to all or certain identifiable general partners the right to vote on a per capita or any other basis, separately or with any class of the limited partners, on any matter. (Dec. 10, 1987, D.C. Law 7-49, § 405, 34 DCR 6856.)

Section references. — This section is referred to in § 41-159.1.

Legislative history of Law 7-49. — See note to § 41-401.

Short title. — See note to § 41-401.

Subchapter V. Finance.

§ 41-451. Form of contribution.

The contribution of a partner may be in cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services. (Dec. 10, 1987, D.C. Law 7-49, § 501, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

Contribution of services. — Unlike the former Uniform Limited Partnership Act

(ULPA), the Revised ULPA permits a limited partner to contribute services. *Reiman v. International Hospitality Group, Ltd.*, App. D.C., 614 A.2d 925 (1992).

§ 41-452. Liability for contribution.

(a) No promise by a limited partner to contribute to the limited partnership shall be enforceable unless set out in a writing signed by the limited partner.

(b)(1) Except as provided in the partnership agreement, a limited partner shall be obligated to the limited partnership to perform any enforceable promise set forth in the partnership agreement to contribute cash or property or to perform services, even if he or she is unable to perform because of death, disability, or any other reason.

(2) If a limited partner does not make the required contribution of property or services, he or she shall be obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to § 41-405, of the stated contribution that has not been made.

(c)(1) The obligation of a limited partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only upon compliance with the partnership agreement or, if the partnership agreement does not so provide, with the consent of all partners.

(2) Any compromise does not affect the rights to enforce the original obligation of any creditor of a limited partnership who extends credit in reliance on that obligation, after the partner signs a writing that reflects the obligation and before the compromise is made. (Dec. 10, 1987, D.C. Law 7-49, § 502, 34 DCR 6856.)

Section references. — This section is referred to in § 41-473.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-453. Sharing of profits and losses.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value of the contributions of each partner as stated in the partnership records to be kept pursuant to § 41-405. (Dec. 10, 1987, D.C. Law 7-49, § 503, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-454. Sharing of distributions.

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. Unless otherwise provided in writing in the partnership agreement, distributions shall be made on the basis of the sharing of profits and losses. (Dec. 10, 1987, D.C. Law 7-49, § 504, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

Subchapter VI. Distributions and Withdrawal.

§ 41-461. Interim distributions.

Except as otherwise provided in this chapter, a partner may receive distributions from a limited partnership before his or her withdrawal and before the dissolution and winding up of the limited partnership to the extent

set forth in the partnership agreement. (Dec. 10, 1987, D.C. Law 7-49, § 601, 34 DCR 6856.)

Section references. — This section is referred to in § 41-484.

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-462. Withdrawal of general partner.

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners but, if the withdrawal notice violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and may offset the damages against the amount otherwise distributable to the withdrawing general partner. (Dec. 10, 1987, D.C. Law 7-49, § 602, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-463. Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership at the time or on the occurrence of events specified in writing in the partnership agreement. If the partnership agreement does not specify in writing the time or the occurrence of events at which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw on not less than 6 months' prior written notice to each general partner at the general partner's address on the books of the limited partnership. (Dec. 10, 1987, D.C. Law 7-49, § 603, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-464. Distribution upon withdrawal.

Except as otherwise provided in this section, on withdrawal, other than a withdrawal pursuant to an assignment by which the assignee becomes a partner, any withdrawing partner may receive any distribution to which he or she is entitled under the partnership agreement and, if not otherwise provided in the partnership agreement, he or she is entitled to receive, within a reasonable time after withdrawal, the fair value of his or her partnership interest in the limited partnership as of the date of withdrawal. (Dec. 10, 1987, D.C. Law 7-49, § 604, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-465. Distribution in kind.

Unless otherwise provided in writing in the partnership agreement, a partner, regardless of the nature of his or her contribution, shall not demand

or receive any distribution from a limited partnership in any form other than cash. (Dec. 10, 1987, D.C. Law 7-49, § 605, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-466. Status as creditor.

Except to the extent limited by § 41-467 or § 41-484, at the time a partner becomes entitled to receive a distribution, the partner shall have the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. (Dec. 10, 1987, D.C. Law 7-49, § 606, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-467. Limitations on return of contributions.

A partner may not receive a return of his or her contribution to a limited partnership to the extent that, after giving effect to the return of his or her contribution, all liabilities of the limited partnership, other than liabilities to partners for the return of their contributions, exceed the fair market value of the partnership assets. (Dec. 10, 1987, D.C. Law 7-49, § 607, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-468. Liability upon return of contribution.

(a) If a limited partner has received the return of any part of his or her contribution without violation of the partnership agreement or this chapter, he or she shall be liable to the limited partnership for a period of one year for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a limited partner has received the return of any part of his or her contribution in violation of the partnership agreement or this chapter, he or she shall be liable to the limited partnership for a period of 6 years for the amount of the contribution wrongfully returned.

(c) A limited partner shall be deemed to receive a return of his or her contribution to the extent that, after a distribution to a partner, his or her share of the fair value of the net assets of the limited partnership is less than the value of his or her total contribution as reflected in the partnership records required to be kept pursuant to § 41-405, minus all distributions in return of his or her contribution made prior to the distribution. (Dec. 10, 1987, D.C. Law 7-49, § 608, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

Subchapter VII. Assignment of Partnership Interests.

§ 41-471. Nature of partnership interest.

A partnership interest is personal property. (Dec. 10, 1987, D.C. Law 7-49, § 701, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401. **Cited** in *Haft v. Haft*, 124 WLR 1817 (Super. Ct. 1996).

§ 41-472. Assignment of partnership interest.

(a) Unless otherwise provided in the partnership agreement, a partnership interest shall be assignable in whole or in part. An assignment of a partnership interest shall not dissolve a limited partnership or entitle the assignee to become a partner or, unless otherwise provided in the partnership agreement, exercise any rights of a partner. Unless otherwise provided in the partnership agreement, an assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled.

(b) The partnership agreement may provide that a partner's interest in a limited partnership may be evidenced by a certificate of partnership interest issued by the limited partnership and may also provide for the assignment or transfer of any partnership interest represented by the certificate and make other provisions with respect to the certificates. (Dec. 10, 1987, D.C. Law 7-49, § 702, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-473. Right of assignee to become limited partner.

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that the assignor gives the assignee that right in accordance with authority described in the partnership agreement or if all other partners consent.

(b) An assignee who has become a limited partner shall have, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner shall be liable for the obligations of his or her assignor to make and return contributions as provided in this chapter. The assignee shall not be obligated for liabilities that are unknown to the assignee at the time he or she became a limited partner and that could not be ascertained from the partnership agreement.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor may not be released from his or her liability to the limited partnership under §§ 41-452 and 41-468. (Dec. 10, 1987, D.C. Law 7-49, § 703, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-474. Death, incompetency, insolvency, or termination of a general partner.

(a) Unless otherwise provided in the partnership agreement:

(1) If a general partner who is an individual dies or a court of competent jurisdiction adjudges the individual to be incompetent to manage his or her person or property, the partner's personal representative, guardian, conservator, or other legal representative shall automatically become a limited partner;

(2) If a general partner is a corporation, estate, trust, partnership, or other entity and is dissolved or terminated, its legal representative or successor shall automatically become a limited partner; and

(3) If a general partner ceases to be a general partner under § 41-442 (3) or permits an act specified in § 41-442 (4), that partner shall automatically become a limited partner.

(b) Unless otherwise provided in the partnership agreement, the allocable share of the profits, losses, and distributions of a general partner who becomes a limited partner under this section is the same as it was prior to the event specified in subsection (a) of this section. (Dec. 10, 1987, D.C. Law 7-49, § 704, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-475. Rights of creditor.

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of judgment with interest. To the extent so charged, the judgment creditor shall have only the rights of an assignee of the partnership interest. This chapter shall not deprive any partner of the benefit of any exemption laws applicable to his or her partnership interest. (Dec. 10, 1987, D.C. Law 7-49, § 705, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

Subchapter VIII. Dissolution.

§ 41-481. Events of dissolution.

A limited partnership is dissolved and its affairs shall be wound up on the first to occur of any of the following:

(1) The date specified in the certificate of limited partnership or on the occurrence of events specified in writing in the partnership agreement;

(2) Consent to dissolution by all partners;

(3) An event of withdrawal of a general partner unless:

(A) At the time there is at least one other general partner and the business is continued by a remaining general partner under a right to do so stated in writing in the partnership agreement; or

(B) If, within 90 days after the date a general partner ceases to be a general partner, all partners consent to continue the business of the limited partnership and to the appointment of, effective as of that date, one or more additional general partners if necessary or desired; or

(4) The entry of a decree of judicial dissolution under § 41-482. (Dec. 10, 1987, D.C. Law 7-49, § 801, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-482. Judicial dissolution.

On application by or for a partner, the Superior Court of the District of Columbia may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement. (Dec. 10, 1987, D.C. Law 7-49, § 802, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-483. Winding up.

Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs. The Superior Court of the District of Columbia, on cause shown, may wind up the limited partnership's affairs on application of any partner or assignee. (Dec. 10, 1987, D.C. Law 7-49, § 803, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-484. Distribution of assets.

Upon the winding up of a limited partnership, the assets shall be distributed:

(1) To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities for distributions to partners under § 41-461 or § 41-464;

(2) Unless otherwise provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under § 41-461 or § 41-464; and

(3) Unless otherwise provided in the partnership agreement, to partners, first, for the return of their contributions and, second, respecting their partnership interests, in the proportions in which the partners share in distributions. (Dec. 10, 1987, D.C. Law 7-49, § 804, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

Subchapter IX. Foreign Limited Partnerships.

§ 41-491. Law governing foreign limited partnerships.

(a) Subject to title IV of the District of Columbia Self-Government and Governmental Reorganization Act, and subsection (b) of this section:

(1) The laws of the state or country under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and

(2) A foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of the District.

(b) A foreign limited partnership may not do any business in the District that the laws of the District prohibit a domestic limited partnership from doing. (Dec. 10, 1987, D.C. Law 7-49, § 901, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

References in text. — Title IV of the District of Columbia Self-Government and Governmental Reorganization Act consists of §§ 401-495; for codification of these sections, see Disposition Table in Volume 9.

Section 11717(b) of Title XI of Pub. L. 105-33, 111 Stat. 786 provided that any reference in law or regulation to the "District of Columbia Self-Government and Governmental Reorganization Act" shall be deemed to be a reference to the "District of Columbia Home Rule Act," which is set out in Volume 1.

§ 41-492. Certificate of authority.

(a) Before doing any interstate, intrastate, or foreign business in the District, a foreign limited partnership shall obtain a certificate of authority from the Department. In order to obtain a certificate of authority, a foreign limited partnership shall submit to the Department an application of the foreign limited partnership for a certificate of authority, executed by a general partner. The application shall be executed by a general partner in accordance with, and the execution shall constitute an affirmation under, §§ 41-421 through 41-424. The application shall set forth:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to do business in the District;

(2) The state or country under whose laws it was formed, the date of its formation, and a statement from a general partner that, as of the date of filing, the foreign limited partnership validly exists as a limited partnership under the laws of the jurisdiction of its organization;

(3) The name and address of its registered agent in the District and written permission that the registered agent has agreed to be its registered agent;

(4) A statement that the Department is appointed the registered agent of the foreign limited partnership if no registered agent has been appointed under paragraph (3) of this subsection, if the registered agent's authority has been revoked, or if the registered agent cannot be found or served through the exercise of reasonable diligence;

(5) The address of the office required to be maintained in the state or country of its organization by the laws of that jurisdiction or, if not so required, of the principal office of the foreign limited partnership;

(6) The name and business address of each general partner;

(7) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an affirmation that the foreign limited partnership shall keep those records until the foreign limited partnership's registration in the District is cancelled; and

(8) The date on which the foreign limited partnership first did, or intends to do, business in the District.

(b) The application for a certificate of authority shall be accompanied by a certificate of good standing from the jurisdiction under which the foreign limited partnership was organized. (Dec. 10, 1987, D.C. Law 7-49, § 902, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-493. Issuance of certificate of authority.

If the Department finds that an application for a certificate of authority meets the requirements of this chapter and all required fees have been paid, the Department shall:

(1) Endorse on the application the date of its acceptance for recordation;

(2) Record the document; and

(3) Issue a certificate of authority to do business in the District. (Dec. 10, 1987, D.C. Law 7-49, § 903, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-494. Name.

(a) A foreign limited partnership may obtain a certificate of authority from the Department under any name, whether or not it is the name under which it does business in its state of organization, that includes the words "limited partnership" or the abbreviation "L.P." and that could be registered by a domestic limited partnership.

(b) A foreign limited partnership may obtain a certificate of authority from the Department under a name other than its legal name if its legal name is already registered with the Department by another entity that is doing business in the District. (Dec. 10, 1987, D.C. Law 7-49, § 904, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-495. Changes and amendments.

If any statement in the application for a certificate of authority of a foreign limited partnership was false when made or any facts described have changed, making the application inaccurate in any material respect, the foreign limited partnership shall promptly file with the Department a certificate, executed by a general partner, correcting the statement. The provisions of § 41-427 are applicable to foreign limited partnerships as if they were domestic limited partnerships. (Dec. 10, 1987, D.C. Law 7-49, § 905, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-496. Cancellation of certificate of authority.

A foreign limited partnership may cancel its certificate of authority by filing with the Department a certificate of withdrawal executed by a general partner. A certificate of withdrawal does not terminate the authority of the Department to accept service of process on the foreign limited partnership with respect to causes of action arising out of doing business in the District. (Dec. 10, 1987, D.C. Law 7-49, § 906, § 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-497. Doing business without a certificate of authority.

(a) If a foreign limited partnership is doing or has done any intrastate, interstate, or foreign business in the District without complying with the requirements of this subchapter, neither the foreign limited partnership nor any person claiming under the foreign limited partnership may maintain a suit in any court of the District unless the foreign limited partnership or the person claiming under the foreign limited partnership shows to the satisfaction of the court that:

(1) The foreign limited partnership or a foreign limited partnership successor to the foreign limited partnership has complied with the requirements of this chapter; or

(2) The foreign limited partnership and any foreign limited partnership successor to the foreign limited partnership are no longer doing intrastate, interstate, or foreign business in the District.

(b) The failure of a foreign limited partnership to register in the District shall not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of the District.

(c) A limited partner of a foreign limited partnership shall not be liable as a general partner of the foreign limited partnership solely by reason of the partnership's having done business in the District without obtaining a certificate of authority.

(d) A foreign limited partnership, by doing business in the District without obtaining a certificate of authority, appoints the Department as its agent for

service of process with respect to causes of action arising out of doing business in the District. (Dec. 10, 1987, D.C. Law 7-49, § 907, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-498. Doing business.

(a) In addition to any other activities that may not constitute doing business in the District, for the purposes of this chapter, a foreign limited partnership shall not be considered to be doing business in the District by:

(1) Maintaining, defending, or settling an action, suit, claim, dispute, or administrative or arbitration proceeding;

(2) Holding meetings of its partners or carrying out other activities that concern its internal affairs;

(3) Maintaining bank accounts;

(4) Collecting debts owed to it or taking security for the debts; or

(5) Appointing an agent for the solicitation of business not to be transacted in the District or for the sale of personal property to the United States within the District unless a contract for sale is accepted by the seller within the District or property is delivered from stock of the seller within the District for use within the District.

(b) No foreign limited partnership whose sole business activity in the District is receiving income from loans secured by real estate and who does not maintain any office, agent, representative, or employees for the purpose of making, maintaining, or liquidating these investments in the District shall be required to obtain a certificate of authority. Any foreign limited partnership shall be deemed to have waived any immunity to service of process and suit in the courts of the District, shall appoint and maintain in the District an agent for service of process, and shall register with the Department the address of its principal office and the name and address of its agent for service of process in the District including any changes in these addresses.

(c) In addition to any other activities that may constitute doing business in the District, for the purposes of this chapter, any foreign limited partnership that owns income-producing real or tangible personal property in the District, other than property exempted by subsection (b) of this section, shall be considered to be doing business in the District. (Dec. 10, 1987, D.C. Law 7-49, § 908, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-499. Assent to laws of the District.

By doing business in the District, a foreign limited partnership assents to the laws of the District. (Dec. 10, 1987, D.C. Law 7-49, § 909, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-499.1. Compliance with title is not consent to suit.

With respect to any cause of action on which a foreign limited partnership would not otherwise be subject to suit in the District, compliance with §§ 41-491 through 41-499 shall not:

(1) Of itself render a foreign limited partnership subject to suit in the District; and

(2) Be considered as consent by it to be sued in the District. (Dec. 10, 1987, D.C. Law 7-49, § 910, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

Subchapter X. Derivative Actions.

§ 41-499.11. Right of action.

A limited partner may bring a derivative action to enforce a right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the limited partners in enforcing the rights of the partnership. (Dec. 10, 1987, D.C. Law 7-49, § 1001, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-499.12. Proper plaintiff.

In a derivative action, the plaintiff:

(1) Shall be a partner at the time of bringing action; and

(2) Shall have been a partner at the time of the transaction of which he or she complains or shall have had his or her status as a partner devolve on him or her by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction. (Dec. 10, 1987, D.C. Law 7-49, § 1002, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-499.13. Pleading.

In a derivative action, the complaint shall set forth with particularity the attempts, if any, of the plaintiff to secure initiation of the action the plaintiff desires by a general partner or the reasons for not making the attempts. (Dec. 10, 1987, D.C. Law 7-49, § 1003, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-499.14. Expenses.

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited partnership the remainder of those proceeds received by him or her. (Dec. 10, 1987, D.C. Law 7-49, § 1004, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

*Subchapter XI. Miscellaneous.***§ 41-499.21. Construction and application.**

This chapter shall be applied and construed so as to effectuate its general purpose to make uniform law with respect to the subject of this chapter among all jurisdictions enacting it. (Dec. 10, 1987, D.C. Law 7-49, § 1101, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-499.22. Rules; fees; notice.

(a) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter.

(b) The Department shall set fees as necessary for the implementation of this chapter.

(c) The Department shall cause notice of the effectiveness of this chapter to be published in a daily newspaper circulated generally in the District within 10 days of December 10, 1987. (Dec. 10, 1987, D.C. Law 7-49, § 1102, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-499.23. Penalties.

Civil fines, penalties, and fees may be imposed for any infraction of the provisions of this chapter, pursuant to Chapter 27 of Title 6 ("Civil Infractions Act"). Adjudication of any infraction shall be pursuant to Chapter 27 of Title 6. (Dec. 10, 1987, D.C. Law 7-49, § 1103, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-499.24. Action by Corporation Counsel.

The Corporation Counsel may bring an action on behalf of the District for violations of any provision of this chapter. (Dec. 10, 1987, D.C. Law 7-49, § 1104, 34 DCR 6856.)

Legislative history of Law 7-49. — See note to § 41-401.

§ 41-499.25. Transition.

(a) All limited partnerships formed on or after December 10, 1987 shall be governed by the provisions of this chapter.

(b) Except as otherwise provided in this section, all existing limited partnerships that have been formed under the provisions of the Uniform Limited Partnership Act shall, on and after December 10, 1987, be governed by the provisions of this chapter. Any existing limited partnership shall not be required to add the term “limited partnership” or the abbreviation “L.P.” to its present name.

(c) Each existing limited partnership formed under the Uniform Limited Partnership Act may, but shall not be required to, make any amendments to its existing certificate of limited partnership on file with the Department to conform to this chapter, provided that:

(1) If an existing limited partnership does not file an amended certificate of limited partnership designating a registered agent as provided in § 41-404, service of process may be made upon any general partner or upon the Department;

(2) If the principal place of business of an existing limited partnership is in the District, that principal place of business shall be deemed the principal office of the limited partnership pursuant to § 41-404; and

(3) If the principal place of business of any existing limited partnership is not in the District, the existing limited partnership shall be required to file an amendment to its existing certificate of limited partnership designating a principal office in the District.

(d) Unless agreed otherwise by the partners, the applicable provisions of the Uniform Limited Partnership Act governing allocation of profits and losses distributions to a withdrawing partner and distributions of assets upon the winding up of limited partnerships shall govern limited partnerships formed prior to December 10, 1987.

(e) The repeal of the Uniform Limited Partnership Act by this chapter shall not impair, or otherwise affect, the organization or the continued existence of a limited partnership existing on December 10, 1987. The repeal of the Uniform Limited Partnership Act by this chapter shall not impair any contract or affect any right accrued before December 10, 1987.

(f) Foreign limited partnerships shall have 60 days from December 10, 1987 to comply with the provisions of subchapter IX of this chapter. (Dec. 10, 1987, D.C. Law 7-49, § 1106, 34 DCR 6856.)

Section references. — This section is referred to in § 41-159.1.

Legislative history of Law 7-49. — See note to § 41-401.

Partner liability. — It is untenable that the

new act could be construed to impose liability upon a person not liable under the law existing at the time an alleged obligation arose. *Reiman v. International Hospitality Group, Ltd.*, App. D.C., 614 A.2d 925 (1992).

§ 41-499.26. Conversion of limited partnership to limited liability partnership.

(a) A limited partnership may become a limited liability partnership by:

(1) Obtaining approval of the terms and conditions of the limited partnership becoming a limited liability limited partnership by the vote necessary to amend the limited partnership agreement except, in the case of a limited partnership agreement that expressly considers contribution obligations, the vote necessary to amend those provisions;

(2) filing a statement of qualification under § 41-160.1(c); and

(3) Complying with the requirements of §§ 41-160.2 to 41-160.4.

(b) A limited liability limited partnership continues to be the same entity that existed before the filing of a statement of qualification under § 41-160.1(c).

(c) Sections 41-153.6 and 41-153.7 apply to both general and limited partners of a limited liability limited partnership. (Dec. 10, 1987, D.C. Law 7-49, § 1107, 34 DCR 6856, as added Jan. 1, 1998, D.C. Law 11-234, § 1205(2), 44 DCR 777.)

Effect of amendments. — D.C. Law 11-234 added this section effective Jan. 1, 1998.

Legislative history of Law 7-49. — See note to § 41-401.

Legislative history of Law 11-234. — Law 11-234, the “Uniform Partnership Act of 1996,” was introduced in Council and assigned Bill No. 11-344, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996,

respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-494 and transmitted to both Houses of Congress for its review. D.C. Law 11-234 became effective on April 9, 1997.

Partner liability. — It is untenable that the new act could be construed to impose liability upon a person not liable under the law existing at the time an alleged obligation arose. *Reiman v. International Hospitality Group, Ltd.*, App. D.C., 614 A.2d 925 (1992).

TITLE 42. PERSONAL PROPERTY.

Chapter

- 1. Recordation of Instruments..... §§ 42-101 to 42-104.
- 2. Disposition of Unclaimed Property..... §§ 42-201 to 42-242.

CHAPTER 1. RECORDATION OF INSTRUMENTS.

Sec.	Sec.
42-101. Filing and indexing of financial statements; legal effect.	42-103. Destruction of released instruments.
42-102. Disposal of void or lapsed instruments; termination statement; exceptions.	42-104. False statements; failure to render termination statement; "Corporation Counsel" defined.

§ 42-101. Filing and indexing of financial statements; legal effect.

It is not necessary for the Recorder of Deeds to spread upon the records of his office the financing statements or other papers filed pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code, but they shall be indexed and, except as hereinafter provided, shall be kept on file and shall be open to inspection by the public, and shall have the same force and legal effect as if they were actually recorded in the books of his office. (Mar. 3, 1901, ch. 854, § 546-C; Mar. 3, 1925, 43 Stat. 1103, ch. 417; June 5, 1952, 66 Stat. 126, ch. 370, § 2; Dec. 30, 1963, 77 Stat. 772, Pub. L. 88-243, § 10; 1973 Ed., § 42-102.)

Cross references. — As to this section's application to motor vehicle liens, see § 40-1002.

§ 42-102. Disposal of void or lapsed instruments; termination statement; exceptions.

(a) Unless the Recorder of Deeds has notice of an action pending relative thereto, he may remove from the files and destroy:

- (1) An instrument filed in his office pursuant to Chapter 10 of Title 40, which has become void or lapsed, and which has been void or lapsed for one year or more, together with any affidavit, release, assignment, or continuation or termination statement relating thereto;
- (2) A lapsed financing statement, a lapsed continuation statement, a statement of assignment or release relating to either, filed pursuant to Part 4 of Article 9 of Subtitle I of Title 28, and any index of any of them, one year or more after lapse of the financing statement and every continuation statement related thereto; and
- (3) A termination statement filed pursuant to § 28:9-404, and the index on which it is noted, one year or more after the filing of the termination statement.

(b) Subsection (a) of this section does not apply to a bill of sale, mortgage, deed of trust, conditional sale of, financing statement or security agreement covering, railroad rolling stock. (Mar. 3, 1901, ch. 854, § 546-D; June 5, 1952, 66 Stat. 126, ch. 370, § 3; June 18, 1953, 67 Stat. 64, ch. 126, § 1; Dec. 30, 1963, 77 Stat. 772, Pub. L. 88-243, § 11; 1973 Ed., § 42-104.)

Section references. — This section is referred to in § 45-909.

§ 42-103. Destruction of released instruments.

When a financing statement filed pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code has not lapsed, but all the collateral described in the financing statement has been released in the manner provided by Part 4 thereof, the Recorder of Deeds may, after the expiration of 3 years from the date of the filing of the statement releasing all the collateral, destroy the financing statement and each continuation statement, statement of assignment, and statement of release relating thereto. (Mar. 3, 1901, ch. 854, § 546-F; June 5, 1952, 66 Stat. 126, ch. 370, § 3; Dec. 30, 1963, 77 Stat. 773, Pub. L. 88-243, § 12; 1973 Ed., § 42-106.)

§ 42-104. False statements; failure to render termination statement; "Corporation Counsel" defined.

(a) Whoever intentionally makes a false statement with respect to a financing statement or other paper filed with the Recorder of Deeds pursuant to Part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Code, or, after receipt of payment in full of the debt secured thereby, neglects or refuses, after written demand by the debtor, to send to the debtor a termination statement as provided by § 28:9-404 of the Code, shall be fined not more than \$500 or imprisoned not more than one year, or both.

(b) Prosecutions for violations of this section shall be by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia.

(c) As used in subsection (b) of this section "Corporation Counsel" means the attorney for the District of Columbia, by whatever title the attorney may be designated by the Mayor of the District of Columbia. (Mar. 3, 1901, ch. 854, § 546-G; June 5, 1952, 66 Stat. 126, ch. 370, § 3; Dec. 30, 1963, 77 Stat. 773, Pub. L. 88-243, § 13; 1973 Ed., § 42-107.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 2. DISPOSITION OF UNCLAIMED PROPERTY.

Sec.	Sec.
42-201. Findings; purpose.	holder relieved from liability; payment of safe deposit box or repository charges; reimbursement of holder paying claim; reclaiming by owner.
42-202. Definitions.	
42-203. Property presumed abandoned.	
42-204. General rules for taking custody of unclaimed intangible property.	
42-205. Conditions precedent to presumption of abandonment of traveler's checks and money orders.	42-221. Crediting of dividends, interest, or increments to owner's account.
42-206. Bank deposits and funds in financial organizations.	42-222. Sale of abandoned property.
42-207. Funds owing under life insurance policies.	42-223. Deposit of funds.
42-208. Deposits and refunds held by utilities.	42-224. Filing of claim with Mayor for abandoned property.
42-209. Stock and other intangible interests in business associations.	42-225. Determination of claims by Mayor.
42-210. Property of business associations and banking or financial organizations held in course of dissolution.	42-226. Claim of state to recover property.
42-211. Property held by fiduciaries.	42-227. Judicial review of Mayor's decision.
42-212. Property held by public officers and agencies.	42-228. Election to take payment or delivery.
42-213. Employee benefit trust distributions.	42-229. Periods of limitation.
42-214. Gift certificates and credit memos.	42-230. Verified reports; examination of records; subpoenas.
42-215. Contents of safe deposit box or other safekeeping repository.	42-231. Confidentiality.
42-216. Unpaid wages or other compensation.	42-232. Retention of records.
42-217. Report of property presumed abandoned.	42-233. Action to compel delivery of abandoned property.
42-218. Notice of abandoned property.	42-234. Reciprocal actions and agreements.
42-219. Payment or delivery of abandoned property.	42-235. Interest and penalties.
42-220. Custody by the District government;	42-236. Enforcement.
	42-237. Agreement to locate property.
	42-238. Rules and regulations.
	42-239. Appropriations.
	42-240. Severability.
	42-241. Uniformity of application and construction.
	42-242. Retroactivity of chapter.

§ 42-201. Findings; purpose.

The District of Columbia currently lacks statutory authority to act as custodian for substantial sums of abandoned personal property within its jurisdiction. This chapter is intended to mandate the report and delivery by holders and to authorize the receipt for safekeeping and fiscal growth by the District of Columbia of any and all personal property which is abandoned, without regard either to any maximum length of time for which such property was abandoned or to any statute limiting the right to sue to claim such property. (Mar. 5, 1981, D.C. Law 3-160, § 101, 27 DCR 5150.)

Legislative history of Law 3-160. — Law 3-160 was introduced in Council and assigned Bill No. 3-267, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 14, 1980 and October 28, 1980, respectively. Signed by the Mayor on November 10, 1980, it was assigned Act No. 3-287 and transmitted to both Houses of Congress for its review.

Transfer of functions. — Pursuant to Reorganization Plan No. 1 of 1992, effective July 7, 1992, all of the duties and functions of the

Unclaimed Property Unit in the Department of Finance and Revenue established under the District of Columbia Uniform Disposition of Unclaimed Property Act § 42-201 et seq., the rules issued pursuant thereto and Mayor's Order 81-82, dated March 27, 1981, 28 DCR 1740, which delegated to the Department of Finance and Revenue the Mayor's authority to administer the act and to issue rules are hereby transferred to the Office of the District of Columbia Controller within the office of Financial Management. The existing Unclaimed Prop-

erty Unit within the Department of Finance and Revenue is abolished.

Cited in *Riggs Nat'l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

§ 42-202. Definitions.

As used in this chapter, the term:

- (1) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held by the holder.
- (2) "Attorney General" means the chief legal officer of a state.
- (3) "Banking organization" means any bank, trust company, savings bank, or a private banker or such other individual or organization defined by the laws of the United States or of the District of Columbia as a bank or banking organization.
- (4) "Business association" means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.
- (5) "District" means within the geographical boundaries of the District of Columbia.
- (6) "Domicile" means, with respect to businesses:
 - (A) The state of incorporation in the case of a corporation incorporated under the laws of a state;
 - (B) The state of the principal place of business in the case of a person not incorporated under the laws of a state; or
 - (C) The state of the principal place of business in the United States of America in the case of any other person. For purposes of this chapter, the term "state" includes the District of Columbia.
- (7) "Employee benefit trust distribution" means any money, life insurance, endowment, or annuity policy or proceeds thereof, securities or other intangible property, and any tangible property that is distributable to a participant, former participant, or the beneficiary, estate, or heirs of a participant, former participant or beneficiary, from a trust or custodial fund established under a plan to provide health and welfare, pension, vacation, severance, retirement benefit, death benefit, stock purchase, profit sharing, employee savings, supplemental unemployment insurance benefits, or similar benefits.
- (8) "Financial organization" means any savings and loan association, building and loan association, credit union, or investment company.
- (9) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
- (10) "Holder" means any person wherever organized or domiciled:
 - (A) In possession of property belonging to another;
 - (B) Who is a trustee in case of a trust; or
 - (C) Who is indebted to another on an obligation.
- (11) "Intangible personal property" means all choses or things in action.
- (12) "Last known address" means a description of the location of the apparent owner for the purpose of the delivery and receipt of mail.
- (13) "Life insurance corporation" means any association or corporation including any nonprofit relief association as defined by § 47-2611, transacting

the business of insurance on the lives of persons or insurance appertaining thereto, including, without limitation, endowments and annuities.

(14) "Mayor" means the Mayor of the District of Columbia or the Mayor's authorized agent.

(15) "Owner" means a depositor in the case of a deposit; a beneficiary in the case of a trust; a creditor, claimant, or payee in the case of other choses in action; or any person having a legal or equitable interest in property subject to this chapter or his or her legal representative.

(16) "Person" means an individual, business association, government or governmental subdivision or agency, public corporation, public authority, estate, trust, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

(16A) "Property" means a fixed and certain interest in or right in an intangible property that is held, issued, or owed in the course of a holder's business, or by a government or governmental entity, and all income or increments therefrom, including that which is referred to as or evidenced by any of the following:

(A) Money, check, draft, deposit, interest, dividend, or income;

(B) Credit balance, customer overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused airline ticket, unused ticket, mineral proceed, or unidentified remittance and electronic fund transfer;

(C) Stock or other evidence of ownership or an interest in a business association;

(D) Bond, debenture, note, or other evidence of indebtedness;

(E) Money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

(F) An amount due and payable under the terms of an insurance policy, including policies providing life insurance, property and casualty insurance, workers compensation insurance, or health and disability benefits insurance; or

(G) An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(16B) "Record" means information that is inscribed on a tangible medium or that is sorted in an electronic or other medium and is retrievable in perceivable form.

(17) "Utility" means any person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas. (Mar. 5, 1981, D.C. Law 3-160, § 102, 27 DCR 5150; Mar. 20, 1998, D.C. Law 12-60, § 1701(a), 44 DCR 7378.)

Effect of amendments. — D.C. Law 12-60 rewrote (4); and added (16A) and (16B).

Temporary amendment of section. — Section 1701(a) of D.C. Law 12-59 rewrote (4);

and added (16A) and (16B).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(a) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(a) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 12-59. — Law 12-59, the “Fiscal Year 1998 Revised Budget Support Temporary Act of 1997,” was introduced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second readings on September 8, 1997, and September 22,

1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

Legislative history of Law 12-60. — Law 12-60, the “Fiscal Year 1998 Revised Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Editor’s notes. — “§ 47-2608” was corrected to “§ 47-2611” in paragraph (13).

§ 42-203. Property presumed abandoned.

(a) All intangible personal property, not otherwise covered by this chapter, including any income or increment thereon and deducting any lawful charges, that is held or owing in the ordinary course of the holder’s business and has remained unclaimed by the owner for more than 3 years after it became payable or distributable is presumed abandoned.

(b) Property presumed abandoned shall include, but is not limited to: Drafts, credit balances, credit checks, uncashed vendor checks, and any other outstanding checks.

(c) Property subject to this chapter shall be deemed payable or distributable notwithstanding the owner’s failure to present any instrument or document evidencing the owner’s right to receive the payment provided therein.

(d) A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the administrator’s burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder. (Mar. 5, 1981, D.C. Law 3-160, § 103, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(a), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(b), 44 DCR 7378.)

Section references. — This section is referred to in §§ 42-204 and 42-205.

Effect of amendments. — D.C. Law 12-60, in (a), substituted “3 years” for “5 years”; and added (d).

Temporary amendment of section. — Section 1701(b) of D.C. Law 12-59 substituted “3 years” for “5 years” in (a); and added (d).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(b) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(b)

of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-64. — Law 9-64, the “Uniform Disposition of Unclaimed Property Act of 1980 Clarifying Temporary Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-322. The Bill was adopted on first and second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-107 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-161. — Law 9-161, the “Uniform Disposition of Unclaimed Property Act of 1980 Dormancy and Clarifying Amendment Act of 1992,” was introduced in

Council and assigned Bill No. 9-333, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-255 and transmitted to both Houses of Congress for its review. D.C. Law 9-161 became effective on September 29, 1992.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Scope of act. — This section cannot be construed as excluding from the reach of the Uniform Disposition of Unclaimed Property Act property otherwise subject to its provisions simply because that property has purportedly been converted into “income” on financial institution’s books. *Riggs Nat’l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

§ 42-204. General rules for taking custody of unclaimed intangible property.

Unless otherwise provided by statute of the District of Columbia, intangible personal property is subject to a presumption of abandonment under this chapter if the conditions leading to a presumption of abandonment as described in §§ 42-203 and 42-205 through 42-216 are satisfied, and any one of the following conditions is met:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in the District;

(2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the property was owned or payable to a person whose last known address is in the District;

(3) The records of the holder do not reflect the last known address of the apparent owner, and it is established that:

(A) The last known address of the person entitled to the property is in the District; or

(B) The holder is either domiciled in the District or is the District government and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide an escheat or abandoned property law applicable to the property in question and the holder is:

(A) Domiciled in the District; or

(B) The District government;

(5) The last known address of the apparent owner, as shown on the record of the holder, is in a foreign nation and the holder is:

(A) Domiciled in the District; or

(B) The District government;

(6)(A) The transaction out of which the property arose occurred in the District;

(B)(i) The identity of the person entitled to the property is unknown;

(ii) The last known address of the apparent owner or other person entitled to the property is unknown; or

(iii) The last known address of the apparent owner is in a state that does not provide an escheat or unclaimed property law applicable to the property; and

(C) The holder is domiciled in a state that does not provide an escheat or abandoned property law applicable to the property; or

(7) The holder is domiciled in the District and has not previously paid or delivered the property to a state. (Mar. 5, 1981, D.C. Law 3-160, § 104, 27 DCR 5150; June 4, 1982, D.C. Law 4-111, § 3(a), 29 DCR 1684; Sept. 29, 1992, D.C. Law 9-161, § 2(b), 39 DCR 5696; Apr. 9, 1997, D.C. Law 11-255, § 44(a), 44 DCR 1271.)

Section references. — This section is referred to in §§ 42-205, 42-209, and 42-226.

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (4)(a).

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 4-111. — Law 4-111 was introduced in Council and assigned Bill No. 4-374, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 9, 1982 and March 23, 1982, respectively. Signed by the Mayor on April 12, 1982, it was assigned Act No. 4-174 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-64. — See note to § 42-203.

Legislative history of Law 9-161. — See note to § 42-203.

Legislative history of Law 11-255. — Law

11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Necessity of satisfying conditions precedent. — Before bank could be required to deliver dormant accounts apparently owned by nonresidents of the District, District was required to establish that the states of residence of such non-residents with which the District did not have reciprocal agreements did not have escheat or abandoned property laws applicable to the accounts. *Riggs Nat’l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

§ 42-205. Conditions precedent to presumption of abandonment of traveler’s checks and money orders.

Any sum payable on a money order, traveler’s check, or similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable is presumed abandoned if the appropriate conditions leading to a presumption of abandonment as described in §§ 42-203 and 42-204 are satisfied and:

(1) The books and records of the banking or financial organization or business association show that the money order, traveler’s check, or similar written instrument was purchased in the District;

(2) The banking or financial organization or the business association has its principal place of business in the District and the books and records of the

business association do not show the state in which the money order, traveler's check, or similar written instrument was purchased; or

(3) The banking or financial organization or the business association has its principal place of business in the District, the books and records of the banking or financial organization or business association show the state in which the money order, traveler's check, or similar written instrument was purchased and the state of purchase does not provide an escheat or abandoned property law applicable to the delivery of the sum payable on such instrument to the state. (Mar. 5, 1981, D.C. Law 3-160, § 105, 27 DCR 5150.)

Section references. — This section is referred to in §§ 42-204, 42-218, 42-219 and 42-226.

Cited in Riggs Nat'l Bank v. District of Columbia, App. D.C., 581 A.2d 1229 (1990).

Legislative history of Law 3-160. — See note to § 42-201.

§ 42-206. Bank deposits and funds in financial organizations.

(a) Any demand, savings, or matured time deposit with a banking or financial organization, including deposits that are automatically renewable, and any funds paid toward the purchase of shares, a mutual investment certificate, or any other interest in a financial organization is presumed abandoned unless the owner within 3 years has:

(1) In the case of a deposit, increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(2) Communicated in writing with the banking or financial organization concerning the property;

(3) Otherwise indicated an interest in the property as evidenced by a memorandum on file prepared by an employee of the banking or financial organization;

(4) Owned other property held by the banking or financial organization for which paragraph (1), (2), or (3) of this subsection are applicable; provided, that the banking or financial organization communicates in writing with regard to the property that would otherwise be presumed abandoned under this subsection to the owner at the address to which communications regarding the other property are regularly sent; or

(5) Had another relationship with the banking or financial organization concerning which the owner has:

(A) Communicated in writing with the banking or financial organization; or

(B) Otherwise indicated an interest as evidenced by a memorandum on file prepared by an employee of the banking or financial organization; provided, that the banking or financial organization communicates in writing with regard to the property that would otherwise be abandoned under this subsection to the owner at the address to which communications regarding the other relationship are regularly sent.

(b) For purposes of subsection (a) of this section, the term “property” includes any interest or dividends thereon.

(c) Any sum payable on a traveler’s check issued by a banking or financial institution or a business association in the District that has been outstanding for more than 15 years after its issuance is presumed abandoned if the owner, for more than 15 years, has not communicated in writing with the banking or financial organization or business association concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization or business association.

(d) A sum payable on any other written instrument on which a banking or financial organization or business association in the District is directly liable, including, but not limited to, certified checks, drafts, or money orders, that has been outstanding for more than 3 years after it was payable, or after its issuance if payable on demand, is presumed abandoned unless the owner has, within 3 years, communicated in writing with the banking or financial organization or business association concerning it or otherwise indicated an interest as evidenced by a memorandum on file prepared by an employee of the banking or financial organization or business association.

(e) No holder may impose with respect to property described in subsection (a) of this section any charges due to dormancy or inactivity, or cease payment of interest unless:

(1) There is a valid, enforceable, written contract between the holder and the owner of the property pursuant to which the holder may impose such charges or cease payment of interest;

(2) The holder regularly imposes such charges or ceases accrual or payment of interest and does not regularly reverse or otherwise cancel such charges or retroactively pay interest with respect to such property; and

(3) For property in excess of \$10, the holder, no more than 3 months prior to the initial imposition of such charges or cessation of interest, gives written notice to the owner of the amount of such charges at the last known address of the owner that such charges will be imposed or that interest will cease; except, that the notice provided in this section need not be given with respect to charges imposed or accrued or interest ceased prior to January 1, 1980.

(4) The amount of the deduction is limited to an amount that is not unconscionable.

(f) No holder shall deduct from the amount of any draft, registered check, money order, certified check, traveler’s check, cashier’s check, treasurer’s check, or any similar written instrument any charges imposed by reason of the failure to present such items for encashment unless:

(1) There is a valid, enforceable, written contract between the holder and the owner of the property pursuant to which the holder may impose such charges; and

(2) The holder regularly imposes such charges and does not regularly reverse or otherwise cancel such charges with respect to such property.

(g) Notwithstanding any provision to the contrary in this section, in the event that any type of property subject to this section is an asset of an

Individual Retirement Account established pursuant to the Employee Retirement Security Act of 1974 (26 U.S.C. § 408 (a)) or of a Keogh Plan established pursuant to the Internal Revenue Code of 1954 (26 U.S.C. § 401 (a)), respectively, it shall not be deemed matured or otherwise reportable if, under the terms of such plan, distribution of all or part of the property would not then be mandatory.

(h) Any property automatically renewable according to its terms that is subject to subsection (a) of this section shall be deemed matured for purposes of this section upon the expiration of its initial term. If at the time provided for delivery in § 42-219, a penalty or forfeiture in the payment of interest would result from the delivery of any such property, the time for delivery shall be extended until such time as no penalty for forfeiture would result. (Mar. 5, 1981, D.C. Law 3-160, § 106, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(c), (d), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(c), 44 DCR 7378.)

Section references. — This section is referred to in § 42-204.

Effect of amendments. — D.C. Law 12-60, substituted “3 years” for “5 years” in the introductory paragraph of (a) and twice in (d); and added (e)(4).

Temporary amendment of section. — Section 1701(c) of D.C. Law 12-59 substituted “3 years” for “5 years” in the introductory paragraph of (a) and twice in (d); and added (e)(4).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(c) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(c) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-64. — See note to § 42-203.

Legislative history of Law 9-161. — See note to § 42-203.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Burden of proof. — In order to sustain the imposition of service charges, a bank had the burden of establishing that it had complied with all three conditions of subsection (e). *Riggs Nat’l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

§ 42-207. Funds owing under life insurance policies.

(a) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than 3 years after the funds became due and payable as established from the records of the insurance company holding or owing the funds.

(b) If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

(c) For purposes of this section, a life or endowment insurance policy or annuity contract not mature by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

(1) The company knows that the insured or annuitant has died; or

(2)(A) The insured has attained, or would have attained if the insured were living, the limiting age under the mortality table on which the reserve is based;

(B) The policy was in force at the time the insured attained, or would have attained, the limiting age under the mortality table on which the reserve is based; and

(C) Neither the insured nor any other person appearing to have an interest in the policy within the preceding 5 years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(d) For the purposes of this section, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being mature or terminated under subsection (a) of this section if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds of the policy before the depletion of the cash surrender value of the policy by the application of those provisions. (Mar. 5, 1981, D.C. Law 3-160, § 107, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(e), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(d), 44 DCR 7378.)

Section references. — This section is referred to in § 42-204.

Effect of amendments. — D.C. Law 12-60 substituted “3 years” for “5 years” in (a).

Temporary amendment of section. — Section 1701(d) of D.C. Law 12-59 substituted “3 years” for “5 years” in (a).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(d) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(d) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997

(D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-64. — See note to § 42-203.

Legislative history of Law 9-161. — See note to § 42-203.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 42-208. Deposits and refunds held by utilities.

The following funds held or owing by any utility are presumed abandoned:

(1) Any deposit, including any interest thereon, made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than

one year after the termination of the services for which the deposit or advance payment was made; and

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than one year after it became payable in accordance with the final determination or order providing for the refund, regardless of whether the final determination or order requires any person entitled to a refund to make a claim. (Mar. 5, 1981, D.C. Law 3-160, § 108, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(f), 39 DCR 5696; Apr. 9, 1997, D.C. Law 11-255, § 44(b), 44 DCR 1271; Mar. 20, 1998, D.C. Law 12-60, § 1701(e), 44 DCR 7378.)

Section references. — This section is referred to in § 42-204.

Effect of amendments. — D.C. Law 9-161 substituted “5” for “7” wherever it appears.

D.C. Law 11-255 validated a previously made technical correction in (1).

D.C. Law 12-60 substituted “1 year” for “5 years” throughout the section.

Temporary amendment of section. — Section 1701(e) of D.C. Law 12-59 substituted “1 year” for “5 years” throughout the section.

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(e) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(e) of the Fiscal Year 1998 Revised Budget Support

Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-64. — See note to § 42-203.

Legislative history of Law 9-161. — See note to § 42-203.

Legislative history of Law 11-255. — See note to § 42-204.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 42-209. Stock and other intangible interests in business associations.

(a) Subject to § 42-204, any stock, other certificate of ownership, or other intangible ownership interest, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to the owner, is presumed abandoned if the owner has not claimed it, corresponded in writing with the business association concerning it, or otherwise communicated with the association concerning it, as evidenced by a memorandum or other record on file with the association within 3 years after the date prescribed for payment or delivery.

(b) Subject to § 42-204, any intangible interest in a business association, as evidenced by the stock records or membership records of the association, is presumed abandoned if:

(1) The interest in the association is owned by a person who for more than 3 years has not:

(A) Claimed a dividend, profit, distribution, interest, payment on principal, or other sum held or owing by the association for or to the person; or

(B) Corresponded in writing with the association or otherwise communicated with the association, as evidenced by a memorandum or other record on file with the association;

(2) The association does not know the location of the owner at the end of the 3-year period; and

(3) With respect to the intangible interest in a business association, the business association shall be deemed the holder.

(4) The return of official shareholder notifications or communications by the postal service as undeliverable shall be evidence that the association does not know the location of the owner.

(c) Subject to § 42-204, any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to the owner, is presumed abandoned at the time the stock, other certificate of ownership, or other intangible ownership interest to which it attaches is presumed abandoned.

(d) This chapter does not apply to any stock or other intangible ownership interest enrolled in a plan that provided for the automatic reinvestment of dividends, distribution, or other sums payable as a result of the interest unless one or more of the following applies:

(1) The records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not, within 3 years, communicated in any manner described in subsection (a) of this section.

(2) Three years have elapsed since the location of the owner became unknown to the association, as evidenced by the return of official shareholder notifications or by the postal service as undeliverable, and the owner has not within those 3 years communicated in any manner described in subsection (a) of this section. The 3-year period from the return of official shareholder notifications or communications shall commence from the earlier of the return of the second such mailing or the time the holder discontinues mailings to the shareholder. (Mar. 5, 1981, D.C. Law 3-160, § 109, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(g), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(f), 44 DCR 7378.)

Section references. — This section is referred to in §§ 42-204 and 42-219.

Effect of amendments. — D.C. Law 12-60 substituted “3 years” for “5 years” in (a) and (b)(1); substituted “3-year” for “5-year” in (b)(2); and added (b)(4) and (d).

Temporary amendment of section. — Section 1701(f) of D.C. Law 12-59 substituted “3 years” for “5 years” in (a) and (b)(1); substituted “3-year” for “5-year” in (b)(2); and added (b)(4) and (d).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(f) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, Octo-

ber 17, 1997, 44 DCR 6196), and see § 1701(f) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-64. — See note to § 42-203.

Legislative history of Law 9-161. — See note to § 42-203.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002

of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 42-210. Property of business associations and banking or financial organizations held in course of dissolution.

All intangible personal property distributable in the course of a voluntary or involuntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in the District, that is unclaimed by the owner within 60 days after the date of final distribution, is presumed abandoned. (Mar. 5, 1981, D.C. Law 3-160, § 110, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(h), 39 DCR 5696.)

Section references. — This section is referred to in § 42-204.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-64. — See note to § 42-203.

Legislative history of Law 9-161. — See note to § 42-203.

§ 42-211. Property held by fiduciaries.

(a) All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person, is presumed abandoned unless the owner, within 3 years after it becomes payable or distributable, has increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary.

(b) For the purpose of this section, if a person holds property as an agent for a business association, the agent is deemed to hold the property in a fiduciary capacity for that business association unless the agreement between the agent and the business association provides otherwise.

(c) For the purposes of this chapter, if a person is deemed to hold property in a fiduciary capacity for a business association alone, that person is the holder of the property only insofar as the interest of the business association in the property is concerned and the business association is the holder of the property insofar as the interest of any other person in the property is concerned. (Mar. 5, 1981, D.C. Law 3-160, § 111, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(i), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(g), 44 DCR 7378.)

Section references. — This section is referred to in § 42-230.

Effect of amendments. — D.C. Law 12-60 substituted “3 years” for “5 years” in (a).

Temporary amendment of section. — Section 1701(g) of D.C. Law 12-59 substituted “3 years” for “5 years” in (a).

Section 2001(b) of D.C. Law 12-59 provided

that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(g) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(g) of the Fiscal Year 1998 Revised Budget Support

Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-64. — See note to § 42-203.

Legislative history of Law 9-161. — See note to § 42-203.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 42-212. Property held by public officers and agencies.

Except for property held by the Property Clerk of the Metropolitan Police Department, as provided in §§ 4-152 to 4-169, all intangible personal property held for the owner by any public corporation, public authority, or public officer of the District government, that has remained unclaimed by the owner for more than one year, is presumed abandoned. (Mar. 5, 1981, D.C. Law 3-160, § 112, 27 DCR 5150; Mar. 20, 1998, D.C. Law 12-60, § 1701(h), 44 DCR 7378.)

Section references. — This section is referred to in § 42-204.

Effect of amendments. — D.C. Law 12-60 substituted “1 year” for “2 years.”

Temporary amendment of section. — Section 1701(h) of D.C. Law 12-59 substituted “1 year” for “2 years.”

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(h) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(h)

of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 42-213. Employee benefit trust distributions.

All employee benefit trust distributions and any income or other increment thereon is presumed abandoned if the owner within 3 years after it becomes payable or distributable has not accepted the distribution, corresponded in writing concerning the distribution, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary of the trust or custodial fund or administrator of the plan under which the trust or fund is established. (Mar. 5, 1981, D.C. Law 3-160, § 113, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(j), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(i), 44 DCR 7378.)

Effect of amendments. — D.C. Law 12-60 substituted “3 years” for “5 years.”

Temporary amendment of section. — Section 1701(i) of D.C. Law 12-59 substituted “3 years” for “5 years.”

Section 2001(b) of D.C. Law 12-59 provided

that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(i) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-152, Octo-

ber 17, 1997, 44 DCR 6196), and see § 1701(i) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-64. — See note to § 42-203.

Legislative history of Law 9-161. — See note to § 42-203.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 42-214. Gift certificates and credit memos.

(a) Gift certificates and credit memos held or owing in the ordinary course of the holder's business that have remained unclaimed by the owner for more than 5 years after becoming payable or distributable are presumed abandoned.

(b) If a gift certificate or credit memo is redeemable for cash or merchandise, its value for purposes of this chapter shall be the amount paid by the purchaser. (Mar. 5, 1981, D.C. Law 3-160, § 114, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(k), 39 DCR 5696.)

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-64. — See note to § 42-203.

Legislative history of Law 9-161. — See note to § 42-203.

§ 42-215. Contents of safe deposit box or other safekeeping repository.

Except as provided in § 34-103, all personal property, tangible or intangible, held in a safe deposit box or any other safekeeping repository in the District by any person in the ordinary course of business, which is unclaimed by the owner for 3 years or more from the date on which the lease or rental period on the box or other repository expired is presumed abandoned. (Mar. 5, 1981, D.C. Law 3-160, § 115, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(l), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(j), 44 DCR 7378.)

Effect of amendments. — D.C. Law 12-60 substituted "3 years" for "5 years."

Temporary amendment of section. — Section 1701(j) of D.C. Law 12-59 substituted "3 years" for "5 years."

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(j) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(j) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-64. — See note to § 42-203.

Legislative history of Law 9-161. — See note to § 42-203.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Cited in Johnston v. Industrial Nat'l Bank, App. D.C., 450 A.2d 414 (1982).

§ 42-216. Unpaid wages or other compensation.

Wages or other compensation for personal services held or owing in the ordinary course of the holder's business that have remained unclaimed by the owner for more than one year after the compensation becomes payable or distributable are presumed abandoned. (Mar. 5, 1981, D.C. Law 3-160, § 116, 27 DCR 5150; Mar. 20, 1998, D.C. Law 12-60, § 1701(k), 44 DCR 7378.)

Section references. — This section is referred to in § 42-204.

Effect of amendments. — D.C. Law 12-60 rewrote the section.

Temporary amendment of section. — Section 1701(k) of D.C. Law 12-59 rewrote the section.

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(k) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(k) of the Fiscal Year 1998 Revised Budget Support

Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Cited in Riggs Nat'l Bank v. District of Columbia, App. D.C., 581 A.2d 1229 (1990).

§ 42-217. Report of property presumed abandoned.

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the Mayor with respect to the property as provided in this section.

(b) The report must be verified and shall include:

(1) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and the beneficiary and his or her last known address according to the life insurance corporation's records;

(2) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and may be inspected by the Mayor, in which case the report must set forth any amounts owing to the holder as shown by § 42-218;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under \$50 shall be reported in the aggregate upon the aggregation exceeding \$50;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property;

(5) Other information which the Mayor prescribes by rule as necessary for the administration of this chapter; and

(6) Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any and if known, of each person appearing from the records of the holder to be the owner of any property of the value of \$50 or more presumed abandoned under this chapter.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or the present holder has changed his or her name while holding the property, the present holder shall file with his or her report all known names and addresses of each previous holder of the property.

(d) The report as of the prior June 30th must be filed before November 1st of each year, but a report with respect to a life insurance company must be filed before May 1st of each year as of December 31 next preceding. The Mayor may postpone the reporting date upon written request by any person required to file a report. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminated the accrual or additional interest on the amount paid.

(e)(1) The holder of property presumed abandoned shall send written notice to the owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in possession of property subject to this chapter, if:

(A) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate; and

(B) The value of the property is \$50 or more.

(2) In calendar year 1998, a report concerning all property presumed to be abandoned as of October 21, 1997, must be filed no later than January 2, 1998.

(f) Verification, if made by a partnership, must be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer. (Mar. 5, 1981, D.C. Law 3-160, § 117, 27 DCR 5150; June 11, 1981, D.C. Law 4-10, § 2(a), 28 DCR 1889; Sept. 29, 1992, D.C. Law 9-161, § 2(m), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(l), 44 DCR 7378.)

Section references. — This section is referred to in §§ 42-218, 42-219, 42-228, 42-232 and 42-237.

Effect of amendments. — D.C. Law 12-60 rewrote (d) and (e).

Temporary amendment of section. — Section 1701(l) of D.C. Law 12-59 rewrote (d) and (e).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(l) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(l) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 4-10. — Law 4-10 was introduced in Council and assigned Bill No. 4-144, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 24, 1981, and April 7, 1981, respectively. Signed by the Mayor on April 20, 1981, it was assigned Act No. 4-22 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-64. — See note to § 42-203.

Legislative history of Law 9-161. — See note to § 42-203.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Cited in *Riggs Nat'l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

§ 42-218. Notice of abandoned property.

(a) Within 120 days from the filing of the report required by § 42-217, the Mayor shall cause notice to be published at least once each week for 2 consecutive weeks in a newspaper of general circulation in the District.

(b) The published notice shall be entitled “Notice of Names of Persons Appearing To Be Owners of Abandoned Property” and shall contain:

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice as specified in this chapter;

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the Mayor; and

(3) A statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the Mayor.

(c) The Mayor is not required to publish notice of any item of less than \$50 in value unless the Mayor deems such publication to be in the public interest.

(d) Within 120 days from the receipt of the report required by § 42-217, the Mayor shall mail a notice to each person having an address listed who appears to be entitled to property of a value of \$50 or more presumed abandoned under this chapter.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the Mayor, property is being held to which the addressee appears entitled;

(2) The name and address of the person holding the property and any necessary information regarding the changes of name and address of the holder; and

(3) A statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the Mayor and a statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the Mayor.

(f) This section is not applicable to sums payable on traveler’s checks or money orders and similar written instruments that are presumed abandoned under § 42-205.

(g) With respect to property reported and delivered on or before January 2, 1998, pursuant to § 42-217(e), the Mayor shall cause the newspaper notice required by subsection (a) of this section to be completed no later than May 1, 1998. (Mar. 5, 1981, D.C. Law 3-160, § 118, 27 DCR 5150; June 11, 1981, D.C. Law 4-10, § 2(b), 28 DCR 1989; Sept. 29, 1992, D.C. Law 9-161, § 2(n), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(m), 44 DCR 7378.)

Section references. — This section is referred to in §§ 42-217 and 42-231.

Effect of amendments. — D.C. Law 12-60, rewrote (b)(3), (e)(3), and (g).

Temporary amendment of section. — Section 1701(m) of D.C. Law 12-59 rewrote (b)(3), (e)(3), and (g).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(m) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, Octo-

ber 17, 1997, 44 DCR 6196), and see § 1701(m) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 4-10. — See note to § 42-217.

Legislative history of Law 9-64. — See note to § 42-203.

Legislative history of Law 9-161. — See note to § 42-203.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 42-219. Payment or delivery of abandoned property.

(a) Except for property held in a safe deposit box or other safekeeping depository, upon filing a report required by § 42-217, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Mayor the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository shall not be delivered to the Mayor until 120 days after filing the report required in § 42-217.

(b) Repealed.

(c) Repealed.

(d) The holder of an interest under § 42-209 shall deliver a duplicate certificate or other evidence of ownership to the Mayor if the holder does not issue certificates of ownership. Upon delivery of a duplicate certificate to the Mayor, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with the provisions of § 42-220 to every person, including any person acquiring the original certificate or the duplicate of the certificate delivered to the Mayor, for any losses or damages resulting to any person by the issuance and delivery to the Mayor of the duplicate certificate. (Mar. 5, 1981, D.C. Law 3-160, § 119, 27 DCR 5150; June 11, 1981, D.C. Law 4-10, § 2(c), 28 DCR 1989; Sept. 29, 1992, D.C. Law 9-161, § 2(o), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(n), 44 DCR 7378.)

Section references. — This section is referred to in §§ 42-206 and 42-237.

Effect of amendments. — D.C. Law 12-60 rewrote (a); and repealed (b) and (c).

Temporary amendment of section. — Section 1701(n) of D.C. Law 12-59 rewrote (a); and repealed (b) and (c).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(n) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(n)

of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 4-10. — See note to § 42-217.

Legislative history of Law 9-161. — See note to § 42-203.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Cited in *Riggs Nat'l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

§ 42-220. Custody by the District government; holder relieved from liability; payment of safe deposit box or repository charges; reimbursement of holder paying claim; reclaiming by owner.

(a) Upon the payment or delivery of property to the Mayor, the District government assumes custody and responsibility for the safekeeping of the property. Any person who pays or delivers property to the Mayor in good faith under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim then existing or which may arise thereafter or be made in respect to the property. Property removed from a safe deposit box or other safekeeping repository may be received by the Mayor subject to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges and the actual cost of the opening thereof, which rent and charges must be paid out of the proceeds remaining after the Mayor has deducted therefrom his or her selling costs.

(b) Any holder who has paid money to the Mayor pursuant to this chapter may make payment to any person appearing to the holder to be entitled thereto, and, upon filing proof of payment and proof that the payee was entitled thereto, the Mayor shall reimburse the holder for the payment without deduction of any fee or other charges. If reimbursement is sought for a payment made on a negotiable instrument including, but not limited to, a traveler's check or money order, the holder must be reimbursed under this subsection upon filing proof that the instrument was duly presented to the holder and that payment was made to a person who appeared to the holder to be entitled to payment.

(c) Any holder who has delivered property to the Mayor pursuant to this chapter may reclaim the property without payment of any fee or other charges upon filing proof that the owner has claimed the property from the holder. The Mayor, in the Mayor's discretion, may accept an affidavit of the holder stating the facts that entitle the holder to reimbursement under this subsection as sufficient proof. (Mar. 5, 1981, D.C. Law 3-160, § 120, 27 DCR 5150.)

Section references. — This section is referred to in § 42-219.

Legislative history of Law 3-160. — See note to § 42-201.

Cited in *Riggs Nat'l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

§ 42-221. Crediting of dividends, interest, or increments to owner's account.

Whenever property other than money is paid or delivered to the Mayor under this chapter, any dividends, interest, or other increments realized or accruing, on the property at or before liquidation or conversion thereof into

money, shall be credited, upon receipt, to the owner's account by the Mayor. (Mar. 5, 1981, D.C. Law 3-160, § 121, 27 DCR 5150.)

Section references. — This section is referred to in § 42-225.

Legislative history of Law 3-160. — See note to § 42-201.

§ 42-222. Sale of abandoned property.

(a) All abandoned property other than money delivered to the Mayor under this chapter which remains unclaimed 1 year after the delivery to the Mayor may be sold to the highest bidder at public sale. The Mayor may decline the highest bid and re-offer the property for sale if the Mayor considers the price bid insufficient. The Mayor need not offer any property for sale if, in the Mayor's opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under subsection (a) of this section shall be preceded by at least a single publication of notice thereof, at least 3 weeks in advance of sale, in a newspaper of general circulation in the District.

(c) The purchaser at any sale conducted by the Mayor pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder and of all persons claiming through or under the owner or prior holder. The Mayor shall execute all documents necessary to complete the transfer of title.

(d) Unless the Mayor considers it to be in the best interest of the District to do otherwise, all securities abandoned under § 42-209 must be held for at least 3 years before the Mayor may sell them. If the Mayor sells any securities delivered pursuant to § 42-209 before the expiration of the 3-year period, any person making a claim pursuant to this act before the end of 3 years is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, less any deduction for fees pursuant to § 42-223(c). A person making a claim under this act after the expiration of this period is entitled to receive either the securities delivered to the Mayor by the holder, if they still remain in the hands of the Mayor, or the proceeds received from the sale, less any amounts deducted pursuant to § 42-223(c); but no person has any claim under this act against the District, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the Mayor. (Mar. 5, 1981, D.C. Law 3-160, § 122, 27 DCR 5150; Mar. 20, 1998, D.C. Law 12-60, § 1701(o), 44 DCR 7378.)

Section references. — This section is referred to in § 42-223.

Effect of amendments. — D.C. Law 12-60 inserted "which remains unclaimed 1 year after the delivery to the Mayor" in the first sentence of (a); and added (d).

Temporary amendment of section. — Section 1701(o) of D.C. Law 12-59 in (a), inserted "which remains unclaimed 1 year after

the delivery to the Mayor" in the first sentence; and added (d).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(o) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, Octo-

ber 17, 1997, 44 DCR 6196), and see § 1701(o) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 42-223. Deposit of funds.

(a) During the first 2 years after the effective date of this chapter, no less than 50% of all property received under this chapter, including the proceeds from the sale of abandoned property under § 42-222, shall be deposited by the Mayor in a separate trust fund or kept for safekeeping with a holder which is a bank or trust company in order to make prompt payment of claims duly allowed by the Mayor as provided by this section. The remainder percentage of funds received and any income or increment to the funds deposited in the trust fund accruing during such 2 years may be deposited in the General Fund of the District government.

(b)(1) All funds received or kept under this chapter after the 2 year period described in subsection (a) of this section, including the proceeds from the sale of abandoned property under § 42-222, shall be deposited by the Mayor in the General Fund of the District government, except that the Mayor shall retain in a separate trust fund an amount not less than \$100,000 in order to make prompt payment of claims duly allowed by the Mayor as provided by this chapter.

(2) Before making the deposit the Mayor shall record at least the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and beneficiary and, with respect to each policy or contract listed in the report of a life insurance corporation, the policy or contract number, and the name of the corporation.

(3) The record shall be available for public inspection during regular business hours. The Mayor of the District of Columbia is authorized to establish and collect reasonable fees for services rendered by the Department of Finance and Revenue for the searching and reproduction of records and other services as may, in the judgment of the Mayor, be necessary to defray the cost of providing services.

(c) Before making any deposit to the credit of the General Fund of the District government, the Mayor may deduct:

(1) Any costs in connection with the sale of abandoned property, or with the disposition by other means of abandoned property under § 42-222;

(2) Any costs of mailing and publication in connection with any abandoned property;

(3) Reasonable service charges; and

(4) The costs incurred in examining records of holders of abandoned property and collecting such property from such holders. (Mar. 5, 1981, D.C. Law 3-160, § 123, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(p), 39 DCR 5696.)

Section references. — This section is referred to in § 42-231.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-161. — See note to § 42-203.

References in text. — The “effective date of this chapter,” referred to near the beginning of the first sentence of subsection (a), is the effective date of D.C. Law 3-160, March 5, 1981.

§ 42-224. Filing of claim with Mayor for abandoned property.

Any person, excluding a state, claiming an interest in any property paid or delivered to the Mayor under this chapter may file a claim to the property or to the net proceeds from its sale. The claim must be on a form prescribed by the Mayor and must be verified by the claimant. (Mar. 5, 1981, D.C. Law 3-160, § 124, 27 DCR 5150.)

Legislative history of Law 3-160. — See note to § 42-201.

§ 42-225. Determination of claims by Mayor.

(a) The Mayor shall within 30 days of the receipt of any claim either pay the claim or give written notice to the claimant of a denial in whole or in part. Upon a denial or a failure by the Mayor to respond within 30 days, the claimant may request a hearing on the claim. Upon such request the Mayor shall hold a hearing and receive evidence in accordance with § 1-1509.

(b) If the claim is determined in favor of the claimant, the Mayor shall make payment of only that amount which the Mayor actually received plus any dividends or interest allowed under § 42-221. The claim shall be paid without deduction for costs of notices or sale or for service charges. (Mar. 5, 1981, D.C. Law 3-160, § 125, 27 DCR 5150.)

Section references. — This section is referred to in § 42-227.

Legislative history of Law 3-160. — See note to § 42-201.

§ 42-226. Claim of state to recover property.

(a) At any time after property has been paid or delivered to the Mayor under this chapter, a state is entitled to recover the property if:

(1) The property was presumed abandoned in the District because the apparent owner was unknown when the property was presumed abandoned under this chapter, the last known address of the apparent owner was in fact in that state, and, under the laws of that state, the property escheated to or was subject to a claim of abandonment by that state;

(2) The last known address of the apparent owner of the property appearing on the records of the holder is in that state and, under the laws of that state, the property has escheated to or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in that state, and, under the laws of that state, the

property has escheated to or become subject to a claim of abandonment by that state;

(4) The property was presumed abandoned to the District government under § 42-204(5) and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(5) The property is the sum payable on a traveler's check, money order, or other similar instrument that was presumed abandoned to the District under § 42-205, the traveler's check, money order, or other similar instrument was in fact purchased in that state, and, under the laws of that state, the property has escheated to or become subject to a claim of abandonment by that state.

(b) The claim of a state to recover escheated or abandoned property under this section must be presented in a form prescribed by the Mayor, who shall consider the claim within 30 days after it is presented. The Mayor shall allow the claim if the Mayor determines that the claiming state is entitled to the abandoned property.

(c) In connection with all property so delivered to a state, the Mayor shall seek indemnification from the state making the claim. (Mar. 5, 1981, D.C. Law 3-160, § 126, 27 DCR 5150.)

Legislative history of Law 3-160. — See note to § 42-201.

Cited in *Riggs Nat'l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

§ 42-227. Judicial review of Mayor's decision.

Any person aggrieved by a decision of the Mayor, or as to whose claim the Mayor has failed to hold a hearing within a reasonable time pursuant to § 42-225 (a), may have such claim reviewed pursuant to § 1-1510. (Mar. 5, 1981, D.C. Law 3-160, § 127, 27 DCR 5150.)

Legislative history of Law 3-160. — See note to § 42-201.

§ 42-228. Election to take payment or delivery.

(a) The Mayor, after receiving reports of property deemed abandoned pursuant to this chapter, may decline to receive any property reported which the Mayor considers to have a value less than the cost of giving notice and holding sale, if the Mayor considers it desirable because of the small sum involved. The Mayor may postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within 120 days after filing the report required under § 42-217, the Mayor shall be deemed to have elected to receive the custody of the property: Provided, that with respect to reports filed no later than June 20, 1981, pursuant to § 42-217(d), the Mayor shall have no more than 30 days after the filing of the reports to decline to receive any reported property.

(b) If a holder elects to report and deliver property otherwise subject to this chapter prior to the time that the property is presumed abandoned, the Mayor, if the Mayor deems it in the best interest of the owner, may consent in writing

to accept the report and delivery of the property upon the conditions and terms as the Mayor shall prescribe. The property delivered under this subsection shall be held by the Mayor and shall not be presumed abandoned until such time as the property would otherwise be presumed abandoned under this chapter.

(c) Any property delivered to the Mayor pursuant to this chapter which has no apparent commercial value shall be retained by the Mayor until such time as the Mayor determines to destroy or otherwise dispose of it. (Mar. 5, 1981, D.C. Law 3-160, § 128, 27 DCR 5150; June 11, 1981, D.C. Law 4-10, § 2(d), 28 DCR 1989; Sept. 29, 1992, D.C. Law 9-161, § 2(q), 39 DCR 5696.)

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-161. — See note to § 42-203.

Legislative history of Law 4-10. — See note to § 42-217.

§ 42-229. Periods of limitation.

(a) The expiration of any period of time specified by contract, statute, or court order, during which a claim for recovery of money or property can be made, or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, does not prevent the money or property from being presumed abandoned property, or affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the Mayor.

(b) No action or proceeding may be commenced by the Mayor to enforce any provision of this chapter in regard to the reporting, delivery, or payment of property more than 10 years after the holder specifically identified the property in a report filed with the Mayor or gave express notice to the Mayor of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent. (Mar. 5, 1981, D.C. Law 3-160, § 129, 27 DCR 5150; May 15, 1991, D.C. Law 9-2, § 2, 38 DCR 1960; Aug. 17, 1991, D.C. Law 9-35, § 2, 38 DCR 4609; Mar. 20, 1998, D.C. Law 12-60, § 1701(p), 44 DCR 7378.)

Effect of amendments. — D.C. Law 12-60 rewrote (b).

Temporary amendment of section. — Section 1701(p) of D.C. Law 12-59 rewrote (b).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(p) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(p) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-2. — Law 9-2, the “Uniform Disposition of Unclaimed Property Act of 1980 Temporary Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-98. The Bill was adopted on first and second readings on February 5, 1991, and March 5, 1991, respectively. Signed by the Mayor on March 15, 1991, it was assigned Act No. 9-7 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-35. — Law 9-35, the “Uniform Disposition of Unclaimed Property Act of 1980 Amendment Act of 1991,”

was introduced in Council and assigned Bill No. 9-114, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 12, 1991, it was assigned Act No. 9-62 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

References in text. — The “effective date of this chapter,” referred to at the end of the second sentence of subsection (b), is the effective date of D.C. Law 3-160, March 5, 1981.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Cited in *Riggs Nat’l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

§ 42-230. Verified reports; examination of records; subpoenas.

(a) The Mayor may require that any person shall file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter.

(b) The Mayor may at reasonable times and upon reasonable notice examine the records of any person to determine if such person has complied with the provisions of this chapter. It shall be no defense to such a request for examination that the person believes it is not in possession of any property reportable or deliverable under this chapter.

(c) If a person under § 42-211 is treated as the holder of the property only insofar as the interest of the business association in such property is concerned, the Mayor may pursuant to subsection (b) of this section examine the records of the person: Provided, that the Mayor shall give the notice required by subsection (b) of this section to both the person and the business association not less than 90 days prior to the examination.

(c-1) If in connection with an examination of the records of a holder property which should have been reported pursuant to this chapter is discovered, the holder may be assessed a fee for the actual costs of the examination in addition to any interest charge or penalty that may be due under § 42-235.

(d) If a holder shall fail to maintain the records required by § 42-232 and the available records of the holder for the periods subject to the chapter are not sufficient to permit the preparation of a report and delivery of abandoned property, the holder shall be ordered to report and deliver such property as may reasonably be estimated based upon any other records of the holder which exist.

(e) If any holder refuses to permit the holder’s records to be examined, the Mayor may issue a subpoena to compel the holder to testify and produce the records pursuant to § 1-338. (Mar. 5, 1981, D.C. Law 3-160, § 130, 27 DCR 5150; June 4, 1982, D.C. Law 4-111, § 3(b), 29 DCR 1684; Sept. 29, 1992, D.C. Law 9-161, § 2(r), 39 DCR 5696.)

Section references. — This section is referred to in § 42-236.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 4-111. — See note to § 42-204.

Legislative history of Law 9-161. — See note to § 42-203.

Cited in *Riggs Nat’l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

§ 42-231. Confidentiality.

Any information or records required to be furnished to the Mayor as provided in this chapter shall be confidential and shall not be disclosed to any person except the person who furnished the same to the Mayor and except as provided in §§ 42-218 and 42-223 or as may be necessary in the proper administration of this chapter alone. (Mar. 5, 1981, D.C. Law 3-160, § 131, 27 DCR 5150.)

Legislative history of Law 3-160. — See note to § 42-201.

§ 42-232. Retention of records.

(a) Except as provided in subsection (b) of this section and unless the Mayor provides otherwise by rule, every holder required to file a report under § 42-217 shall, as to any property for which it has obtained the address of the owner, maintain a record of the name and address of the owner for 10 years after the date the property may have become reportable.

(b) Any business association that sells in the District traveler's checks, money orders, or other similar written instruments, other than third party bank checks on which the business association is directly liable or that provides those traveler's checks, money orders, or similar written instruments to others for sale in the District, shall maintain a record of such instruments while they remain outstanding indicating the state and date of issue for 3 years after the date the property may have become reportable. The record may be destroyed after the record has been retained for such reasonable time as the Mayor by rule shall designate. (Mar. 5, 1981, D.C. Law 3-160, § 132, 27 DCR 5150.)

Section references. — This section is referred to in § 42-230.

Cited in Riggs Nat'l Bank v. District of Columbia, App. D.C., 581 A.2d 1229 (1990).

Legislative history of Law 3-160. — See note to § 42-201.

§ 42-233. Action to compel delivery of abandoned property.

If any person refuses to pay or deliver abandoned property to the Mayor as required under this chapter, the Mayor may bring an action in the Superior Court of the District of Columbia to compel such delivery. (Mar. 5, 1981, D.C. Law 3-160, § 133, 27 DCR 5150.)

Legislative history of Law 3-160. — See note to § 42-201.

§ 42-234. Reciprocal actions and agreements.

(a) At the request of a state, the Corporation Counsel may bring an action in the name of the administrator of the requesting state, in any court of appropriate jurisdiction to enforce the unclaimed property laws of the request-

ing state against a holder in the District of property subject to escheat or a claim of abandonment by that state, if that state has agreed to pay expenses incurred by the Corporation Counsel in bringing the action.

(b) The Mayor may request that the attorney general of a state or any other person bring an action in the name of the Mayor in that state. The District government shall pay all expenses including attorney's fees in any action under this subsection. Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner in accordance with this chapter.

(c)(1) The Mayor may enter into an agreement to provide and to receive information needed to enable the District government and a state to audit or otherwise determine unclaimed property that the District or the state may be entitled to escheat or subject to a claim of custody as abandoned property.

(2) The Mayor may by rule require the reporting of information needed to enable the Mayor to comply with agreements made pursuant to this section and prescribe the form, including verification of the information to be reported, and the times for filing the reports.

(d) The Mayor may join with states to seek enforcement of this chapter against any person who is or may be holding property reportable under this chapter. (Mar. 5, 1981, D.C. Law 3-160, § 134, 27 DCR 5150.)

Legislative history of Law 3-160. — See note to § 42-201.

Cited in *Fleming v. Carroll Publishing Co.*, App. D.C., 581 A.2d 1219 (1990).

§ 42-235. Interest and penalties.

(a) Any person who fails to pay or deliver property within the time prescribed by this chapter shall be required to pay interest at the rate of 1½% per month or fraction of a month on the property or value of the property from the date the property should have been paid or delivered.

(b) Except as otherwise provided in subsection (c) of this section, a holder who fails to report, pay, or deliver property within the time prescribed under this chapter, or fails to perform other duties imposed by this chapter, shall pay to the Mayor, in addition to the interest as provided in subsection (a) of this section, a civil penalty of \$200 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of \$10,000.

(c) A holder who willfully fails to report, pay, or deliver property within the time prescribed under this chapter, or fails to perform other duties imposed by this chapter, shall pay to the Mayor, in addition to the interest as provided in subsection (a) of this section, a civil penalty of \$1,000 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of \$25,000, plus 25% of the value of any property that should have been paid or delivered.

(d) The interest or penalty or any part of the interest or penalty as imposed in subsection (b) or (c) of this section may be waived by the Mayor if the person's failure to pay or deliver property is satisfactorily explained to the Mayor and if the failure has resulted from a mistake by the person in understanding or applying the law or the facts which require that person to pay or deliver property as provided in this chapter.

(e) For purposes of this section, the term “person” also includes an officer or employee of a corporation, or member or employee of a partnership or association, who as an officer, employee, or member is responsible to report, pay, or deliver abandoned property to the Mayor as required under this chapter.

(f) A holder who fails to exercise due diligence as provided in § 42-217 will be assessed a \$10 penalty per item. (Mar. 5, 1981, D.C. Law 3-160, § 135, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(s), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(q), 44 DCR 7378.)

Section references. — This section is referred to in §§ 42-230 and 42-236.

Effect of amendments. — D.C. Law 12-60 rewrote (b), (c), and (d); and added (f).

Temporary amendment of section. — Section 1701(q) of D.C. Law 12-59 rewrote (b), (c), and (d); and added (f).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 1701(q) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(q) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-161. — See note to § 42-203.

Legislative history of Law 12-59. — See note to § 42-202.

Legislative history of Law 12-60. — See note to § 42-202.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Imposition of penalties. — Imposition of penalties following a finding that the Uniform Disposition of Unclaimed Property Act has been violated is mandatory. *Riggs Nat’l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

Maximum penalty. — Although subsection (a) provides that a violator shall pay a civil penalty of \$100 for each day that each report is withheld or each duty is not performed, it also provides that the maximum penalty is \$1,000 for each violation; therefore, after a violation has continued for ten days, the penalty peaks at \$1,000, and no further sum may be imposed. *Riggs Nat’l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

Violation. — A failure to report property as required under the Uniform Disposition of Unclaimed Property Act constitutes a single violation for purposes of subsection (a), and every other duty imposed by the Act is subject to a similar analysis. *Riggs Nat’l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

§ 42-236. Enforcement.

(a) All fines levied pursuant to § 42-235(a) are civil in nature.

(b) The Mayor may issue a notice of violation to any person who violates a provision of this chapter. The notice shall:

- (1) State the nature of the violation; and
- (2) Describe the procedures provided in this section.

(c) A notice of violation shall be the summons and complaint for purposes of this section. A duplicate of the notice of violation shall be served personally on the person to whom it is issued as provided in subsection (d) of this section. The original or a facsimile thereof shall be filed with the Corporation Counsel and shall be deemed a record kept in the ordinary course of business and shall be prima facie evidence of the facts contained therein.

(d) A notice of violation shall be served personally upon the alleged violator. If the alleged violator is not present the notice of violation shall be served by affixing such notice to the place of business in a conspicuous place.

(e) The Mayor shall prescribe the form for the notice of violation. A Mayor's rule or order establishing the amount of collateral shall be submitted by the Mayor to the Council of the District of Columbia for a 30 calendar day review period, excluding days of Council of the District of Columbia recess. No such rules or regulations shall take effect until the end of the 30 calendar day period beginning on the day such rules or regulations are transmitted by the Mayor to the Chairman of the Council of the District of Columbia, and then, only if during such period, the Council of the District of Columbia does not adopt a resolution disapproving such rules and regulations in whole or in part.

(f) A person shall answer a notice of violation within 20 days by:

(1) Depositing and forfeiting collateral in an amount established by rule or order of the Mayor; or

(2) Depositing collateral in an amount established by rule or order of the Mayor and requesting the Superior Court of the District of Columbia to set a trial date.

(g) Unless otherwise provided, the conduct of any civil trial commenced pursuant to subsections (b), (c), (d), (e) and (f) of this section shall be governed by the Superior Court of the District of Columbia Rules of Civil Procedure.

(h) In such trial, the complaint of a violation of this chapter shall be brought in the name of the District of Columbia by the Corporation Counsel. The burden of proof shall be upon the District of Columbia and no violation of this chapter may be established except upon proof by a preponderance of the evidence.

(i) All fines, collateral, and fees collected under this section shall be paid into the General Fund of the District government.

(j) A fine or collateral is due and payable pursuant to § 42-235(a) upon default or a finding at trial in favor of the District government or upon the failure of a person to answer a notice of violation within 15 days as provided in subsection (f) of this section.

(k) Failure of a person to pay a fine or collateral when due shall cause such fine or collateral to be due and payable in twice the original amount, not to exceed \$20,000.

(l)(1) The District of Columbia shall have a lien upon any amount due and payable as a fine or collateral pursuant to subsections (a), (b), and (c) of § 42-235 and any amount due as the cost of conducting an examination pursuant to § 42-230(c).

(2) Such lien shall not be effective unless: (A) the District government has filed in the Office of the Recorder of Deeds of the District of Columbia, in a docket provided for such liens, a written statement containing the name and address of the violator and the date and approximate place of the violation; and (B) the District government has given notice of the filing of such lien to the violator. Thereafter, the District government is authorized to file suit in the amount of its lien. (Mar. 5, 1981, D.C. Law 3-160, § 136, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(t), 39 DCR 5696.)

Legislative history of Law 3-160. — See note to § 42-201.

Legislative history of Law 9-161. — See note to § 42-203.

Editor's notes. — “§ 42-234” was corrected to “§ 42-235” in subsection (j).

Cited in *Riggs Nat'l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

§ 42-237. Agreement to locate property.

(a) No agreement or contract with a person for a fee or compensation to locate, deliver, recover, or assist in the recovery of property reported under § 42-217, entered into within 7 months after the date payment or delivery is required under § 42-219, is valid.

(b) No agreement entered into after 7 months from the date of delivery of the property by the holder to the Mayor is valid if a person thereby undertakes to locate property included in a report for a fee or other compensation exceeding 10 percent of the value of the recoverable property unless the agreement is in writing and signed by the owner and discloses the nature and value of the property and the name and address of the holder of the property as such facts have been reported. Nothing in this section shall be construed to prevent an owner from asserting at any time that an agreement to locate property is based upon an excessive or unjust consideration. (Mar. 5, 1981, D.C. Law 3-160, § 137, 27 DCR 5150.)

Legislative history of Law 3-160. — See note to § 42-201.

§ 42-238. Rules and regulations.

The Mayor is authorized to issue such rules, regulations, and orders as may be necessary in order to effectuate the purposes of this chapter. (Mar. 5, 1981, D.C. Law 3-160, § 138, 27 DCR 5150.)

Legislative history of Law 3-160. — See note to § 42-201.

Cited in *Riggs Nat'l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

§ 42-239. Appropriations.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter. (Mar. 5, 1981, D.C. Law 3-160, § 139, 27 DCR 5150.)

Legislative history of Law 3-160. — See note to § 42-201.

§ 42-240. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. (Mar. 5, 1981, D.C. Law 3-160, § 140, 27 DCR 5150.)

Legislative history of Law 3-160. — See note to § 42-201.

§ 42-241. Uniformity of application and construction.

This chapter shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states enacting it. (Mar. 5, 1981, D.C. Law 3-160, § 141, 27 DCR 5150.)

Legislative history of Law 3-160. — See note to § 42-201.

Cited in *Riggs Nat'l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

§ 42-242. Retroactivity of chapter.

This chapter shall apply retroactively to all items of property which would have been presumed abandoned if this chapter had been in effect as of January 1, 1980. (Mar. 5, 1981, D.C. Law 3-160, § 301, 27 DCR 5150.)

Section references. — This section is referred to in § 42-229.

Legislative history of Law 3-160. — See note to § 42-201.

Constitutionality. — The Uniform Disposition of Unclaimed Property Act may operate to revive claims that were barred by the statute of limitations prior to the enactment of the Act, and this result did not violate bank's right to due process. *Riggs Nat'l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

Property affected by retroactivity provisions. — All funds held by bank identifiable January 1, 1980 as having been unclaimed for the requisite period were subject to reporting and delivery requirements of the Uniform Disposition of Unclaimed Property Act whether or not the bank had transferred them to income. *Riggs Nat'l Bank v. District of Columbia*, App. D.C., 581 A.2d 1229 (1990).

TITLE 43. PUBLIC UTILITIES.

Chapter

1. General Provisions..... §§ 43-101 to 43-107.
2. Definition of Terms and Application of Law..... §§ 43-201 to 43-223.
3. Penal Provisions..... §§ 43-301 to 43-314.
4. Creation of Public Service Commission; Members;
Counsel; Employees..... §§ 43-401 to 43-411.
5. Service, Valuation, Accounts..... §§ 43-501 to 43-547.
6. Rates, Examinations, Investigations,
and Hearings..... §§ 43-601 to 43-623.
7. Issuance of Securities..... §§ 43-701 to 43-707.
8. Sale and Merger of Utilities..... §§ 43-801 to 43-803.
9. Orders and Court Proceedings..... §§ 43-901 to 43-912.
10. Gas and Electric Corporations..... §§ 43-1001 to 43-1006.
11. Gas Companies; Special Acts..... §§ 43-1101 to 43-1107.
12. Electric Light and Power Companies;
Special Acts..... §§ 43-1201 to 43-1208.
13. Private Conduits..... §§ 43-1301 to 43-1304.
14. Telegraph and Telephone Companies..... §§ 43-1401 to 43-1418.
- 14A. Telecommunications Competition..... §§ 43-1451 to 43-1458.
15. Water Supply, Assessments, and Rates..... §§ 43-1501 to 43-1554.
16. Sanitary Sewage Works..... §§ 43-1601 to 43-1624.
- 16A. Water and Sewer Services Amnesty Program,
Receivership Provision, and Administrative
Review..... §§ 43-1651 to 43-1656.
- 16B. Water and Sewer Authority..... §§ 43-1661 to 43-1691.
17. Underground Facilities Protection..... §§ 43-1701 to 43-1711.
18. Cable Television..... §§ 43-1801 to 43-1849.
19. Public Utility Environmental Impact
Statement Requirements..... §§ 43-1901 to 43-1904.
20. Cogeneration Facilities Appropriateness
Standards..... §§ 43-2001 to 43-2004.

Cross references. — As to hazardous waste management, see Chapter 7 of Title 6.

CHAPTER 1. GENERAL PROVISIONS.

- | Sec. | Sec. |
|--|--|
| 43-101. Utilities to report accidents; Commission may investigate. | 43-104. Number of directors of public utilities. |
| 43-102. Commission to inquire into violations by utilities; enforcement of laws affecting utilities. | 43-105. Existing laws to remain in force. |
| 43-103. Chapters to be liberally construed; severability of provisions. | 43-106. Action pending March 4, 1913, unaffected by Chapters 1-10 of this title. |
| | 43-107. Right to alter, amend, or repeal reserved. |

§ 43-101. Utilities to report accidents; Commission may investigate.

Every public utility shall, whenever an accident attended with loss of human life or personal injury without loss of human life occurs within the District of Columbia, upon its premises, or directly or indirectly arising from or connected with its maintenance or operation, give immediate notice thereof to the Public Service Commission of the District of Columbia. In the event of any such accident, the Commission, if it deem the public interest requires it, shall cause an investigation to be made forthwith. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 89; 1973 Ed., § 43-1001.)

§ 43-102. Commission to inquire into violations by utilities; enforcement of laws affecting utilities.

The Commission shall inquire into any neglect or violation of the laws or regulations in force in the District of Columbia by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be its duty, to enforce the provisions of Chapters 1-10 of this title as well as all other laws relating to public utilities. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 90; 1973 Ed., § 43-1002.)

Cross references. — As to general provisions for enforcement of laws, rules and regulations, see §§ 43-306 to 43-308.

§ 43-103. Chapters to be liberally construed; severability of provisions.

The provisions of Chapters 1-10 of this title shall be interpreted and construed liberally in order to accomplish the purposes thereof, and where any specific power or authority is given the Commission by the provisions of Chapters 1-10 of this title the enumeration thereof shall not be held to exclude or impair any power or authority otherwise in Chapters 1-10 of this title conferred on said Commission. The Commission hereby created shall have, in addition to the powers in Chapters 1-10 of this title specified, mentioned, and indicated all additional, implied, and incidental power which may be proper and necessary to effect and carry out, perform, and execute all the said powers herein specified, mentioned, and indicated. A substantial compliance with the requirements of Chapters 1-10 of this title shall be sufficient to give effect to all the rules, orders, acts, and regulations of the Commission, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto. That each section of Chapters 1-10 of this title, and every part of each section, are hereby declared to be independent sections and the holding of any section or sections or part or parts thereof to be void, ineffective, or unconstitutional for any cause shall not be deemed to affect any other section or part thereof. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 92; 1973 Ed., § 43-1003.)

Cross references. — As to prosecution for violation of rules under Public Utilities Act, see § 43-307.

Construction of regulatory legislation. — Modern regulatory legislation is generally regarded as a newly conceived system of legal arrangements to deal with newly emergent problems in society, entitled to liberal construction because of its remedial character and not subject to the role of strict construction of statutes in derogation of common law because its genesis and conception are wholly outside and apart from any common law frame of reference. *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 378 A.2d 1085 (1977).

Powers of the Commission. — The Public Service Commission has both the power and the duty to determine whether the Office of the People's Counsel (OPC) request for expenses is consistent with OPC's statutory authority and whether it is within the limitations enumerated in § 43-612(a)(3). *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 572 A.2d 410 (1990).

Under this section, Commission has authority to issue plan for interim rate relief. *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 330 A.2d 236 (1974).

Advertising published in classified telephone directory did not constitute a ser-

vice and the Public Service Commission did not have statutory jurisdiction to regulate the rates charged for advertising in the classified directory. *Classified Directory Subscribers Ass'n v. Public Serv. Comm'n*, 274 F. Supp. 261 (D.D.C. 1966), *aff'd*, 383 F.2d 510 (D.C. Cir. 1967).

Commission may permit fuel adjustment clause in rate design. — The Commission's authority to permit the use of a fuel adjustment clause in a rate design is included within the "additional, implied, and incidental power which may be proper and necessary to effect and carry out" the Commission's enumerated statutory powers. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 472 A.2d 860 (1984).

New telephone company service not essentially different from rate change. — Absent a controlling statutory provision, no reason exists to construe the telephone company's new service offering, a technologically improved PBX system, as essentially different from a rate change application, wherein Public Service Commission approval is statutorily required. *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 378 A.2d 1085 (1977).

Cited in *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 498 A.2d 1167 (1985).

§ 43-104. Number of directors of public utilities.

The Board of Directors of every public utility shall consist of not more than 17 nor less than 7 members, within which limitation the membership may be in any case increased or diminished, as the stockholders or the board of directors may from time to time determine. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 100; 1973 Ed., § 40-1004; July 20, 1996, D.C. Law 11-146, § 2, 43 DCR 2845.)

Effect of amendments. — D.C. Law 11-146 substituted "not more than 17" for "not more than 15" and inserted "or board of directors."

Legislative history of Law 11-146. — Law 11-146, the "Public Utilities Board of Directors Amendment Act of 1996," was introduced in Council and Assigned Bill No. 11-536, which was referred to the Committee on Public Ser-

vices and Regional Authorities. The Bill was adopted on first and second readings on April 2, 1996, and May 7, 1996, respectively. Signed by the Mayor on May 20, 1996, it was assigned Act No. 11-270 and transmitted to both Houses of Congress for its review. D. C. Law 11-146 became effective on July 20, 1996.

§ 43-105. Existing laws to remain in force.

Except as modified or changed by Chapters 1-10 of this title and until modified or changed under its provisions, all charters, statutes, laws, ordinances, and regulations in force on March 4, 1913, shall remain and continue to be in full force and effect until altered, amended, or repealed according to law: Provided, that all charters, statutes, acts, and parts of acts, laws, ordinances, and regulations enacted prior to March 4, 1913, inconsistent and repugnant to the provisions of Chapters 1-10 of this title, and only so far as

inconsistent and repugnant thereto, are hereby repealed. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 101; 1973 Ed., § 43-1005.)

Cross references. — As to laws, orders, rules and regulations, see § 43-404. As to appeal and review, see § 43-905.

§ 43-106. Action pending March 4, 1913, unaffected by Chapters 1-10 of this title.

Chapters 1-10 of this title shall not affect actions or proceedings, civil or criminal, or quasi-criminal, pending on March 4, 1913, but the same may be prosecuted or defended as provided by preexisting law or regulation. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 102; 1973 Ed., § 43-1006.)

Cross references. — As to applicable saving clause, see § 43-105.

§ 43-107. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal Chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 103; 1973 Ed., § 43-1007.)

CHAPTER 2. DEFINITION OF TERMS AND APPLICATION OF LAW.

Sec.	Sec.
43-201. "Commission" defined.	43-214. "Electric plant" defined.
43-202. "Commissioner" defined.	43-215. "Electrical corporation" defined.
43-203. "Public utility" defined.	43-216. "Waterpower company" defined.
43-204. "Service" defined.	43-217. "Telephone corporation" defined.
43-205. "Corporation" defined.	43-218. "Telephone line" defined.
43-206. "Person" defined.	43-219. "Telegraph corporation" defined.
43-207. "Joint rates" defined.	43-220. "Telegraph line" defined.
43-208. "Extension or extensions" defined.	43-221. "Pipeline company" defined.
43-209. "Street railroad" defined.	43-222. Applicability of Chapters 1-10 of this title.
43-210. "Street railroad corporation" defined.	43-223. Corporations subject to Chapters 1-10 of this title.
43-211. "Common carrier" defined.	
43-212. "Gas plant" defined.	
43-213. "Gas corporation" defined.	

§ 43-201. "Commission" defined.

For the purpose of Chapters 1-10 of this title the term "Commission" when used herein shall mean the Public Service Commission of the District of Columbia created by Chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; 1973 Ed., § 43-101.)

§ 43-202. "Commissioner" defined.

The term "Commissioner" when used in Chapters 1-10 of this title shall mean one of the members of such Commission. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; 1973 Ed., § 43-102.)

§ 43-203. "Public utility" defined.

The term "public utility" as used in Chapters 1-10 of this title shall mean and embrace every street railroad, street railroad corporation, common carrier, gas plant, gas corporation, electric plant, electrical corporation, waterpower company, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipeline company. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; 1973 Ed., § 43-103.)

Owner of automobile who hires out vehicle and his services is not a public utility. Bell v. Harlan, 20 F.2d 271 (D.C. Cir. 1927).

§ 43-204. "Service" defined.

The term "service" is used in Chapters 1-10 of this title in its broadest and most inclusive sense. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; 1973 Ed., § 43-104.)

Advertising published in classified telephone directory did not constitute a service and the Public Service Commission did not have statutory jurisdiction to regulate the rates charged for advertising in the classified directory. Classified Directory Subscribers

Ass'n v. Public Serv. Comm'n, 274 F. Supp. 261 (D.D.C. 1966), *aff'd*, 383 F.2d 510 (D.C. Cir. 1967).

Furnishing steam and chilled water. — Coverage under Chapters 1 to 10 of this title is sufficiently broad to encompass furnishing of

steam and chilled water pursuant to a contract between a utility and an association representing hotel-office-apartment buildings complex. *Watergate Imp. Ass'n v. Public Serv. Comm'n*, App. D.C., 326 A.2d 778 (1974).

§ 43-205. “Corporation” defined.

The term “corporation” when used in Chapters 1-10 of this title includes a corporation, company, association, and joint-stock company or association. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; 1973 Ed., § 43-105.)

§ 43-206. “Person” defined.

The word “person” when used in Chapters 1-10 of this title includes an individual and a firm or copartnership. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; 1973 Ed., § 43-106.)

§ 43-207. “Joint rates” defined.

The term “joint rates” when used in Chapters 1-10 of this title with reference to street railways shall be taken to mean rates between unrelated lines in effect on March 4, 1913, under then existing law or under contract, or which may thereafter be specifically authorized by law. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; 1973 Ed., § 43-107.)

§ 43-208. “Extension or extensions” defined.

The term “extension or extensions” when used in Chapters 1-10 of this title shall include the reasonable extension of the service and facilities of every street railroad, street railroad corporation, gas plant, gas corporation, electric plant, electrical corporation, telephone corporation, telephone line, telegraph line, and telegraph corporation as the same are defined in Chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; 1973 Ed., § 43-108.)

§ 43-209. “Street railroad” defined.

The term “street railroad” when used in Chapters 1-10 of this title includes every such railroad, whether wholly or partly in the District of Columbia, by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for compensation, and includes all equipment, construction, maintenance, repairs, switches, spurs, tracks, terminals, terminal facilities of every kind, trackage, joint or reciprocal trackage, transfers of passengers between street railways having connecting lines and street railways having independent lines, subways, tunnels, and stations, used, operated, or owned by or in connection with any such street railroad, and all the property of the same used in the conduct of its business. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; 1973 Ed., § 43-109.)

§ 43-210. “Street railroad corporation” defined.

The term “street railroad corporation” when used in Chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any street railroad or any cars or other equipment used thereon or in connection therewith. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1; 1973 Ed., § 43-110.)

§ 43-211. “Common carrier” defined.

The term “common carrier” when used in Chapters 1-10 of this title includes express companies and every corporation, street railroad corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any agency or agencies for public use for the conveyance of persons or property within the District of Columbia for hire. Taxicabs, and all other passenger vehicles for hire, steam railroads, express companies subject to the jurisdiction of the Interstate Commerce Commission, the Washington Terminal Company, and the Norfolk and Washington Steamboat Company, and all companies engaged in interstate traffic upon the Potomac River and Chesapeake Bay and the Washington and Old Dominion Railway, excepting as to the regulation of its operation inside of the District of Columbia, and the Washington-Virginia Railway Company, excepting as to the regulation of its operation inside of the District of Columbia, are excluded from the operation of Chapters 1-10 of this title, and are not included in the term “common carrier.” (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1; Feb. 25, 1916, 39 Stat. 13, ch. 34; Aug. 21, 1916, 39 Stat. 521, ch. 367; Aug. 26, 1916, 39 Stat. 536, ch. 412; 1973 Ed., § 43-111; Mar. 25, 1986, D.C. Law 6-97, § 21(b), 33 DCR 703.)

Legislative history of Law 6-97. — Law 6-97 was introduced in Council and assigned Bill No. 6-159, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on December 17, 1985, and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-125 and transmitted to both Houses of Congress for its review.

Effective date. — Section 24(b) of D.C. Law 6-97 provides that §§ 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Personal operation of facilities by owner. — Under this section, any person who

owns the described facilities, regardless of whether he personally operates them, is a “common carrier” subject to regulation by the Commission. *In re Rice*, 165 F.2d 617 (D.C. Cir. 1947).

Taxicab companies. — A taxicab company is a common carrier and subject to the jurisdiction of the Commission. *Terminal Taxicab Co. v. Kutz*, 241 U.S. 252, 36 S. Ct. 583, 60 L. Ed. 984 (1916).

One who owned and rented taxicabs for operation in the District was a “common carrier” within the meaning of this section. *In re Rice*, 165 F.2d 617 (D.C. Cir. 1947).

§ 43-212. “Gas plant” defined.

The term “gas plant” when used in Chapters 1-10 of this title includes all buildings, easements, real estate, mains, pipes, conduits, service pipes, services, pipe galleries, meters, boilers, water-gas sets, retorts, fixtures, condensers, scrubbers, purifiers, holders, materials, apparatus, personal property, and franchises, and property of every kind used in the conduct of the business operated, owned, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale, or furnishing of gas (natural or manufactured) for light, heat, or power. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1; 1973 Ed., § 43-112.)

Section references. — This section is referred to in §§ 5-804 and 7-135.

Cited in *Washington Gas Light Co. v. Public Serv. Comm’n*, App. D.C., 455 A.2d 384 (1982).

§ 43-213. “Gas corporation” defined.

The term “gas corporation” when used in Chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person manufacturing, making, distributing, or selling gas for light, heat, or power, or for any public use whatsoever in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, and in said district owning, operating, controlling, or managing any gas plant, except where the gas is made or produced and distributed by the maker on or through private property solely for its own use or the use of its tenants and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1; 1973 Ed., § 43-113.)

§ 43-214. “Electric plant” defined.

The term “electric plant” when used in Chapters 1-10 of this title includes all engines, boilers, dynamos, generators, storage batteries, converters, motors, transformers, cables, wires, poles, lamps, meters, easements, real estate, fixtures, and personal property, materials, apparatus, and devices of every kind operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale, or furnishing of electricity for light, heat, or power, and any conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying electrical conductors used or to be used wholly or in part for the transmission of electricity for light, heat, or power, except where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 975, ch. 150, § 8, par. 1; 1973 Ed., § 43-114.)

Cited in *Washington Gas Light Co. v. Public Serv. Comm’n*, App. D.C., 455 A.2d 384 (1982).

§ 43-215. “Electrical corporation” defined.

The term “electrical corporation” when used in Chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person doing business in the District of Columbia, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any electric plant, including any water plant, or water property, or water falls, or dam, or waterpower stations, except where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for the use of others. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1; 1973 Ed., § 43-115.)

Section references. — This section is referred to in §§ 5-804 and 7-135.

§ 43-216. “Waterpower company” defined.

The term “waterpower company” when used in Chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, managing, or controlling any plant or property, dam or water supply, canal, or power station for the development of waterpower for the generation of electrical current or other power or for the distribution or sale of such electrical current or other power. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1; 1973 Ed., § 43-116.)

§ 43-217. “Telephone corporation” defined.

The term “telephone corporation” when used in Chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and persons, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any plant, wires, poles for the reception, transmission, or communication of messages by telephone, telephonic apparatus or instruments, or any telephone line or part of telephone line, used in the conduct of the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1; 1973 Ed., § 43-117.)

§ 43-218. “Telephone line” defined.

The term “telephone line” when used in Chapters 1-10 of this title includes conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, and appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances, and routes used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1; 1973 Ed., § 43-118.)

Cited in *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 455 A.2d 384 (1982).

§ 43-219. “Telegraph corporation” defined.

The term “telegraph corporation” when used in Chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any plant, wires, poles, or property for the purposes of communication, or of transmitting or receiving messages by telegraph, or by any telegraphic apparatus or instrument, or any telegraph line or part of telegraph line used in the conduct of the business of affording for hire, communication by telegraph, or which licenses, lets, or permits telegraphic communication for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1; 1973 Ed., § 43-119.)

§ 43-220. “Telegraph line” defined.

The term “telegraph line” when used in Chapters 1-10 of this title includes conduits, ducts, poles, wires, cables, crossarms, instruments, machinery, appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, and routes used, operated, controlled, or owned by any telegraph corporation to facilitate the business of affording communication by telegraph for hire. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1; 1973 Ed., § 43-120.)

§ 43-221. “Pipeline company” defined.

The term “pipeline company” when used in Chapters 1-10 of this title includes every corporation, company, association, joint-stock company or association, partnership, or person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, managing, or controlling the supply of any liquid, steam, or air through pipes or tubing to consumers for use or for lighting, heating, or cooling purposes, or for power. (Mar. 4, 1913, 37 Stat. 976, ch. 150, § 8, par. 1; 1973 Ed., § 43-121.)

Furnishing steam and chilled water. — Coverage under Chapters 1 to 10 of this title is sufficiently broad to encompass furnishing of steam and chilled water services pursuant to a contract between a utility and an association representing hotel-office-apartment buildings complex. *Watergate Imp. Ass’n v. Public Serv. Comm’n*, App. D.C., 326 A.2d 778 (1974).

§ 43-222. Applicability of Chapters 1-10 of this title.

Chapters 1-10 of this title shall apply to the transportation of passengers, freight, or property from one point to another within the District of Columbia, and any common carrier performing such service; and Chapters 1-10 of this title shall be so applicable and be so construed as to be free from conflict with those provisions of the Constitution of the United States and the laws in pursuance thereof relating to interstate commerce. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 1; 1973 Ed., § 43-122.)

Operator of a single passenger sedan is not a public utility and does not come under the jurisdiction of an order of the Commission requiring financial protection of his patrons. *Bell v. Harlan*, 20 F.2d 271 (D.C. Cir. 1927).

Commission jurisdiction over taxicab company. — A taxicab company which has the exclusive right to taxicab passengers from the

Washington terminal, and the exclusive right to the taxicab business out from certain hotels, is to this extent under the jurisdiction of the Commission, but the Commission has no jurisdiction over its garage business, or rates charged on such business. *Terminal Taxicab Co. v. Kutz*, 241 U.S. 252, 36 S. Ct. 583, 60 L. Ed. 984 (1916).

§ 43-223. Corporations subject to Chapters 1-10 of this title.

Corporations formed to acquire property or to transact business which would be subject to the provisions of Chapters 1-10 of this title, and corporations possessing franchises for any of the purposes contemplated by Chapters 1-10 of this title shall be deemed to be subject to the provisions of Chapters 1-10 of this title, although no property may have been acquired, business transacted, or franchises exercised. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 1; 1973 Ed., § 43-123.)

CHAPTER 3. PENAL PROVISIONS.

Sec.	Sec.
43-301. False statements in securing approval for stock issue.	43-308. Construction of §§ 43-306 and 43-307.
43-302. Demanding or receiving greater or less than established rates.	43-309. Destruction of apparatus or appliance of Commission.
43-303. Reduced rates for consumer furnishing facilities prohibited.	43-310. Each day's default to constitute separate and distinct offense.
43-304. Rebates.	43-311. Commission authorized to regulate rates.
43-305. Failure or refusal to furnish information; furnishing false information; failure to keep proper accounts.	43-312. Fines, penalties and forfeitures to be paid into Treasury.
43-306. Failure to perform duty or obey Commission order; violation of pipeline safety regulation.	43-313. Rights, penalties and forfeitures not released; penalties and forfeitures cumulative.
43-307. Prosecution for violation of rules.	43-314. Payment of taxicab charge.

§ 43-301. False statements in securing approval for stock issue.

Each and every director, president, secretary, or other official of any such public utility who shall make any false statement to secure the issue of any stock, certificate of stock, bond, mortgage, or other evidence of indebtedness, or who shall, by false statement knowingly made, procure of the Commission the making of the certificate herein provided, or issue, with knowledge of such fraud, negotiate, or cause to be negotiated, any such stock, certificate of stock, bond, mortgage, or other evidence of indebtedness in violation of Chapters 1-10 of this title, shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than \$1,000 or by imprisonment for a term of not less than 1 year, or by both such fine and imprisonment, in the discretion of the court. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 80; 1973 Ed., § 43-901.)

§ 43-302. Demanding or receiving greater or less than established rates.

If any public utility or any agent or officer thereof shall, directly or indirectly, by any device whatsoever, or otherwise, charge, demand, collect, or receive from any person, firm, or corporation a greater or less compensation for any service rendered or to be rendered by it in or affecting or relating to the conduct of a street railroad or street railroad corporation, common carrier, gas plant, gas corporation, electric plant, electric corporation, water power company, telephone line, telephone corporation, telegraph line, or telegraph corporation, or pipeline company, or to the production, transmission, delivery, or furnishing of heat, light, water, or power, or the conveyance of telephone or telegraph messages, or for any service in connection therewith than that prescribed in the public schedules or tariffs then in force or established as provided herein, or than it charges, demands, collects, or receives from any other person, firm, or corporation other than one conducting a like business for a like and contemporaneous service, such public utility shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be a misdemeanor

and unlawful, and upon conviction thereof shall forfeit and pay to the District of Columbia not less than \$100 nor more than \$1,000 for each offense; and such agent or officer so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$100 for each offense. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 81; 1973 Ed., § 43-902.)

Cross references. — As to rates charged by electric power companies, see § 43-1207.

Utility may require cash deposit from customers unable to establish financial responsibility. *Riegel v. Public Utils. Comm'n*, 48

F.2d 1023 (D.C. Cir.), cert. denied, 284 U.S. 644, 52 S. Ct. 24, 76 L. Ed. 548 (1931).

Cited in Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n, App. D.C., 432 A.2d 343 (1981).

§ 43-303. Reduced rates for consumer furnishing facilities prohibited.

It shall be unlawful for any public utility to demand, charge, collect, or receive from any person, firm, or corporation less compensation for any service rendered or to be rendered by said public utility in consideration of the furnishing by said person, firm, or corporation of any part of the facilities incident thereto; provided, that nothing herein shall be construed as prohibiting any public utility from renting any facilities incident to the production, transmission, delivery or furnishing of heat, light, water, or power, or the supply of any liquid, steam, or air, through pipes or tubing, or the conveyance of telegraph or telephone messages, and paying a reasonable rental therefor; or as requiring any public utility to furnish any part of such appliances which are situated in and upon the premises of any consumer or user, except telephone station equipment upon the subscriber's premises, and, unless otherwise ordered by the Commission, meters, and appliances for measurements of any product or service. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 82; 1973 Ed., § 43-903.)

§ 43-304. Rebates.

It shall be unlawful for any person, firm, or corporation to solicit, accept, or receive any rebate, concession, or discrimination in respect to any service in or affecting or relating to any public utility or the production, transmission, delivery, or furnishing of heat, light, water, or power, or any liquid, steam, or air, or the conveying of telegraph or telephone messages within the District of Columbia, or for any service in connection therewith whereby any such service shall, by any device whatsoever or otherwise, be rendered free or at a less rate than that named in the schedules and tariffs in force as provided in Chapters 1-10 of this title, or whereby any service or advantage is received other than is in Chapters 1-10 of this title specified. Any person, firm, or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$200 nor more than \$1,000 for each offense. (Mar. 4, 1913, 37 Stat. 991, ch. 150, § 8, par. 83; 1973 Ed., § 43-904.)

§ 43-305. Failure or refusal to furnish information; furnishing false information; failure to keep proper accounts.

Any officer, agent, or employee of any public utility who shall fail or refuse to fill out and return any blanks, as required by Chapters 1-10 of this title, or shall fail or refuse to answer any question therein propounded, or shall knowingly or wilfully give a false answer to any such question, or shall evade the answer to any such question where the fact inquired of is within his knowledge, or who shall, upon proper demand, fail or refuse to exhibit to the Commission or any commissioner or any person authorized to examine the same, any book, paper, account, record, or memoranda of such public utility which is in his possession or under his control, or who shall fail to properly use and keep his system of accounting, or any part thereof, as prescribed by the Commission under Chapters 1-10 of this title, or who shall refuse to do any act or thing in connection with such system of accounting when so directed by the Commission or its authorized representative shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$200 nor more than \$1,000 for each offense, and a penalty of not less than \$500 nor more than \$2,000 shall, on conviction, be imposed on the public utility for each such offense when such officer, agent, or employee acted in obedience to the direction, instruction, or request of such public utility or any general officer thereof. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 84; 1973 Ed., § 43-905.)

§ 43-306. Failure to perform duty or obey Commission order; violation of pipeline safety regulation.

(a) If any public utility shall violate any provision of Chapters 1-10 of this title, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided, or shall fail, neglect, or refuse to obey any lawful requirement or order made by the Commission, or any judgment or decree made by any court upon its application, for every such violation, failure, or refusal such public utility shall forfeit and pay to the District of Columbia the sum of \$300 for each such offense. In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any public utility acting within the scope of his employment and instructions shall in every case be deemed to be the act, omission, or failure of such public utility.

(b) Any person who violates any regulation issued by the Commission governing safety of pipeline facilities and the transportation of gas, shall be subject to a civil penalty as set forth in the Commission's regulations, Title 15 of the District of Columbia Municipal Regulations (15 DCMR), for each violation for each day that violation persists. Civil penalties established by the Commission shall not exceed maximum civil penalties established by federal laws and regulations governing the safety of pipeline facilities and the transportation of gas.

(c) Any such civil penalty may be compromised by the Commission. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of such penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the District of Columbia to the person charged or may be recovered in a civil action in the District of Columbia courts. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 85; Aug. 11, 1971, 85 Stat. 319, Pub. L. 92-94, § 1(b); 1973 Ed., § 43-906; Mar. 14, 1985, D.C. Law 5-153, § 3(f), 31 DCR 6440; May 21, 1992, D.C. Law 9-109, § 2, 39 DCR 2158.)

Cross references. — As to each day's default constituting separate offense, see § 43-310.

As to investigation of neglect or violations of laws, rules, or regulations, see § 43-102.

Section references. — This section is referred to in §§ 43-307 and 43-308.

Legislative history of Law 5-153. — Law 5-153 was introduced in Council and assigned Bill No. 5-225, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on October 23, 1984, and November 7, 1984, respectively. Disapproved by the Mayor on November 30, 1984, the Bill was reenacted by the Council on December 4, 1984, assigned Act No. 5-217 and transmitted to both Houses of Congress for review.

Legislative history of Law 9-109. — Law 9-109, the "Pipeline Safety Penal Provisions Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-339, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on February 4, 1992, and March 3, 1992, respectively. Signed by the Mayor on March 23, 1992, it was assigned Act No. 9-181 and transmitted to both Houses of Congress for its review. D.C. Law 9-109 became effective on May 21, 1992.

References in text. — Regulations governing safety of pipeline facilities and transportation of gas are found at 15 DCMR 2398.

§ 43-307. Prosecution for violation of rules.

Prosecution for violation of any rule, order, or regulation issued, adopted, or approved by the Public Service Commission pursuant to Chapters 1-10 of this title; § 40-703 (e), or Chapters 28 and 30 of Title 47, shall be on information in the Superior Court of the District of Columbia, in the name of the District of Columbia, by the Corporation Counsel or any of his or her assistants. Any person, corporation, or public utility violating any rule, order, or regulation shall, upon conviction, be fined not more than \$300. With respect to orders, rules, or regulations made or adopted by the Public Service Commission under authority of Chapters 1-10 of this title, this section shall be construed to apply only to the orders, rules, or regulations subject to the penalties specifically provided in § 43-306. (Apr. 5, 1939, 53 Stat. 569, ch. 40, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 43-907; Mar. 14, 1985, D.C. Law 5-153, § 4(a), 31 DCR 6440.)

Cross references. — As to rules and regulations, see § 43-403. As to rules and regulations for the regulation and control of traffic and motor vehicles, see § 40-703.

As to construction and interpretation of Chapters 1-10 of Title 43, see § 43-103.

Section references. — This section is referred to in § 43-308.

Legislative history of Law 5-153. — See note to § 43-306.

References in text. — Chapter 30 of Title 47, referred to in the first sentence, was repealed by D.C. Law 5-136, effective March 13, 1985.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-308. Construction of §§ 43-306 and 43-307.

The provisions of §§ 43-306 and 43-307 relating to the orders, rules, and regulations of the Public Service Commission may be enforced either as provided in § 43-306 or 43-307. (Apr. 5, 1939, 53 Stat. 569, ch. 40, § 2; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; 1973 Ed., § 43-908; Mar. 14, 1985, D.C. Law 5-153, § 4(b), 31 DCR 6440.)

Legislative history of Law 5-153. — See note to § 43-306.

§ 43-309. Destruction of apparatus or appliance of Commission.

Any person who shall destroy, injure, or interfere with any apparatus or appliance owned or operated by or in charge of the Commission or its agent shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding \$100 or imprisonment for a period not exceeding 30 days, or both. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 86; 1973 Ed., § 43-909.)

§ 43-310. Each day's default to constitute separate and distinct offense.

Every day during which any public utility, or any officer, agent, or employee thereof, shall fail knowingly or willfully to observe and comply with any order or direction of the Commission, or to perform any duty enjoined by this section, shall constitute a separate and distinct violation of such order, or direction, or of Chapters 1-10 of this title, as the case may be. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 87; 1973 Ed., § 43-910.)

§ 43-311. Commission authorized to regulate rates.

Whenever, after hearing and investigation as provided in Chapters 1-10 of this title, the Commission shall find that any rate, toll, charge, regulation, or

practice of any public utility within the District of Columbia is unreasonable or discriminatory, it shall have the power to regulate, fix, and determine the same as provided in Chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 992, ch. 150, § 8, par. 88; 1973 Ed., § 43-911.)

Cross references. — As to investigation and determination of rates, see §§ 43-608 to 43-618.

As to alteration, revocation, or amendment of orders, see § 43-902.

Gas rate making is primarily a legislative process, and the Commission is not bound to use any single formula or combination of formulae in determining rates so long as the result of a rate order is not unjust or unreason-

able, and the Commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Cited in *People's Counsel v. Public Serv. Comm'n*, App. D.C., 472 A.2d 860 (1984).

§ 43-312. Fines, penalties and forfeitures to be paid into Treasury.

All moneys received from fines, forfeitures, and penalties shall be paid into the Treasury of the United States to the credit of the General Fund of the District of Columbia. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 98; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; 1973 Ed., § 43-912.)

§ 43-313. Rights, penalties and forfeitures not released; penalties and forfeitures cumulative.

Chapters 1-10 of this title shall not have the effect to release or waive any right of action by the United States, or by the District of Columbia, or by any person, for any right, penalty, or forfeiture under any law of the United States or any regulation in force in the District of Columbia; and all penalties and forfeitures accruing under said chapters shall be cumulative, and a suit for any recovery of one shall not be a bar to the recovery of any other penalty. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 93; 1973 Ed., § 43-913.)

§ 43-314. Payment of taxicab charge.

No person who engages a taxicab shall refuse or fail to pay or attempt to avoid payment of the lawful charge due the driver or owner of the taxicab. Any person who violates this section shall upon conviction be punished by a fine of not more than \$300 or imprisonment for not more than 10 days. (Feb. 26, 1981, D.C. Law 3-117, § 2, 27 DCR 5636.)

Legislative history of Law 3-117. — Law 3-117 was introduced in Council and assigned Bill No. 3-346, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second

readings on November 12, 1980 and December 9, 1980, respectively. Signed by the Mayor on December 18, 1980, it was assigned Act No. 3-311 and transmitted to both Houses of Congress for its review.

CHAPTER 4. CREATION OF PUBLIC SERVICE COMMISSION; MEMBERS;
COUNSEL; EMPLOYEES.

Sec.	Sec.
43-401. Members; eligibility; oath.	43-408. Employees; expenses; expenditures.
43-402. Function of Commission; unjust, unreasonable, or discriminating charge prohibited.	43-409. Authority of Interstate Commerce Commission withdrawn; rules and regulations to remain in force; joint action in regulation of public-service company.
43-403. Quorum; investigations; rules and regulations.	43-410. Orders for repairs; improvement in equipment, service.
43-404. Acts of prior Commission validated.	43-411. Authority of Mayor not affected; ordinances of Commissioners not affected unless modified by Commission.
43-405. Office of the General Counsel.	
43-406. People's Counsel — Appointment, compensation, qualifications; personnel; duties.	
43-407. Same — Appropriations.	

§ 43-401. Members; eligibility; oath.

The Public Service Commission of the District of Columbia shall be composed of 3 commissioners appointed by the Mayor by and with the advice and consent of the Council, except that the members (other than the Mayor of the District of Columbia) serving as commissioners of such Commission on January 1, 1975, by virtue of their appointment by the President, by and with the advice and consent of the Senate, shall continue to serve until the expiration of the terms for which they were so appointed. One of the 3 commissioners shall be designated as Chairperson of the Commission by the Mayor of the District of Columbia, with the advice and consent of the Council. Such designation shall continue for the length of the appointee's unexpired term or until otherwise terminated by the Mayor. The members first appointed by the Mayor, by and with the advice and consent of the Council, on or after January 2, 1975, shall serve until June 30, 1978. The Mayor may remove any commissioner for neglect of duty or misconduct in office. When the Mayor determines that any member has engaged in any neglect of duty or misconduct in office, he or she shall notify such member, in writing, of the charge against him or her and that such member has 10 days within which to request a hearing before the Council on such charge. If such member fails to request a hearing within 10 days after receiving such notice, then the Mayor may remove such member and appoint a new member. The hearing requested by a member may be either open or closed, as requested by such member. In the event such hearing is closed, the vote of the Council as a result of such hearing shall be taken at an open meeting of the Council. The Council shall begin such hearings within 60 calendar days after receiving notice from the Mayor indicating that a member has requested such a hearing. If two-thirds of the Council members vote to remove such member, then such member shall be removed. The Mayor may appoint a new member to serve until the expiration of the term of the member so removed. The Chairperson of the Commission shall serve as the chief administrative officer of the Commission. The terms of office of all successors shall expire 4 years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was

appointed shall be appointed only for the unexpired term of his predecessor. No commissioner shall, during his term of office, hold any other public office. Each of the commissioners shall receive a salary equivalent to that received by an employee compensated at the top level of grade 16 pursuant to subchapter XII of Chapter 6 of Title 1. The Mayor shall furnish the Public Service Commission with suitable offices and quarters. No person shall be eligible to the office of commissioner of the Public Service Commission of the District of Columbia who has not been a bona fide resident of the District of Columbia for a period of at least 3 years next preceding his appointment or who has voted or claimed residence elsewhere during such period. No person shall be eligible to the office of commissioner of said Public Service Commission who is, or who shall have been during a period of 5 years next preceding his appointment, directly or indirectly interested in any public utility operating, owning, or having an interest in property in the District of Columbia; or in any stock, bond, mortgage, security, or contract of any such public utility. If any such commissioner shall voluntarily become so interested, his office shall ipso facto become vacant; and if any such commissioner shall become so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of such interest, and if he fails to do so his office shall become vacant. Before entering upon the duties of his office each commissioner, the secretary of the Commission, the counsel of the Commission and every employee of said Commission shall take and subscribe the constitutional oath of office, and shall in addition thereto make oath or affirmation before and file with the clerk of the Superior Court of the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97(a); Dec. 15, 1926, 44 Stat. 920, ch. 8, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(39)(A); 1973 Ed., § 43-201; Dec. 24, 1973, 87 Stat. 811, Pub. L. 93-198, title IV, § 493(b); Jan. 3, 1975, 88 Stat. 2178, Pub. L. 93-635, § 17; Mar. 3, 1979, D.C. Law 2-139, § 3205(hhh), 25 DCR 5740; Oct. 24, 1981, D.C. Law 4-43, § 2, 28 DCR 4261.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

As to liberal construction of Chapters 1 to 10 of this title, see § 43-103.

As to saving clause, see § 43-105.

As to actions pending on effective date of Chapters 1 to 10 of this title, see § 43-106.

Section references. — This section is referred to in §§ 1-299.2, 1-637.1, 2-2619, 43-404, 43-406, 43-1451, and 43-1802.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and trans-

mitted to both Houses of Congress for its review.

Legislative history of Law 4-43. — Law 4-43 was introduced in Council and assigned Bill No. 4-156, which was referred to the Committee on Government Operations and the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 14, 1981, and July 28, 1981, respectively. Signed by the Mayor on August 6, 1981, it was assigned Act No. 4-78 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Definitions applicable. — The definitions in § 1-202 apply to terms appearing in the amendment to this section by the Act of December 24, 1973, Pub. L. 93-198.

Commission is special agency created to perform relevant regulatory functions over public utility companies within its jurisdiction, and it may make orders, subject to court review, to carry out its decisions. *Public Utils. Comm'n v. Capital Transit Co.*, 214 F.2d 242 (D.C. Cir. 1954).

§ 43-402. Function of Commission; unjust, unreasonable, or discriminating charge prohibited.

There shall be a Public Service Commission whose function shall be to insure that every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminating charge for such facility or service is prohibited and is hereby declared unlawful. (1973 Ed., § 43-201a; Dec. 24, 1973, 87 Stat. 811, Pub. L. 93-198, title IV, § 493(a).)

Deregulation of streetlighting service. — Section 130 of H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that the Public Service Commission is authorized to order and to approve the deregulation of streetlighting service to the District of Columbia as provided in its opinion and order in Formal Case No. 813, dated July 12, 1984 (Order No. 8056), this section, § 43-501, and § 43-1207, and provided that the provisions of this opinion and order regarding deregulation of streetlighting service are hereby ratified and declared to be in effect as of July 12, 1984 and shall continue to be in effect until revoked or rescinded.

Every unjust, unreasonable or discriminatory charge is declared unlawful under this section. *District of Columbia v. Potomac Elec. Power Co.*, App. D.C., 402 A.2d 430 (1979).

Explanation of ratemaking decisions. — A full and clear explanation of a ratemaking decision must include the following components: (1) The Commission must announce the criteria governing the rate determination, and

(2) it must explain "how the particular rate order reflects application of these criteria to the facts of the case." *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 661 A.2d 131 (1995).

While the reasonableness of the "overall effect" of the rate order remains the primary consideration, however, the Commission nonetheless has an obligation to disclose the methodology by which that decision was reached, for the actual methodology used may have a bearing on the court's overall judgment as to the reasonableness of the order. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 661 A.2d 131 (1995).

Standard of review. — Unless the overall effect of a rate is unjust and unreasonable, the Commission's order should be approved, irrespective of infirmities in the methodology used to calculate it. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 661 A.2d 131 (1995).

Cited in *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 498 A.2d 1167 (1985).

§ 43-403. Quorum; investigations; rules and regulations.

A majority of the commissioners shall constitute a quorum to do business, and any vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the Commission. Any investigation, inquiry, or hearing within the powers of the Commission may be made or held by any commissioner, whose acts and orders, when approved by the Commission, shall be deemed to be the order of the Commission. The Commission shall have power to adopt and publish rules and regulations for the administration of the provisions of Chapters 1-10 of this title, including the conduct of its investigations, inquiries, hearings, and other proceedings. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97(b); Dec. 15, 1926, 44 Stat. 921, ch. 8, § 1; 1973 Ed., § 43-202.)

Cross references. — As to rules and regulations, see § 1-319.

As to investigation of injuries or deaths occurring in operation of utility company, see § 43-101.

As to prosecution of violations of rules and regulations, see §§ 43-306 to 43-308.

As to rules and regulations of Interstate Commerce Commission, see § 43-409.

As to rules and regulations of Mayor, see § 43-411.

As to rules, regulations, and forms for computing depreciation, see § 43-515.

As to rules, regulations, and forms for accounts of new construction, see § 43-516.

As to rules and regulations governing sliding scale of rates and dividends, see § 43-517.

As to rules and regulations for testing meters and measuring devices, see § 43-520.

As to rules and regulations governing pro-

ceedings, investigations, inspections, tests, audits, and hearings before Commission, see § 43-602.

As to rules and regulations for testing gas and electric meters, see § 43-1003.

As to jurisdiction and control over street railroads and bus lines, see Chapter 2 of Title 44.

Special regulations for utility companies. — Utility companies operating under public franchises and having monopolistic characteristics are subject to special regulations, and cases involving utility's operations are not governed by the ordinary rules applicable to judicial interference in the conduct of a business enterprise. *Public Utils. Comm'n v. Capital Transit Co.*, 214 F.2d 242 (D.C. Cir. 1954).

Cited in *Patrick v. Smith*, 45 F.2d 924 (D.C. Cir. 1930).

§ 43-404. Acts of prior Commission validated.

Sections 43-401 to 43-404 shall not be construed:

(1) To invalidate any subpoena, valuation, order, rule, regulation, or revocation, or any rescission, alteration, modification, amendment, or suspension thereof issued by the Commission prior to the date on which the commissioners first appointed under § 43-401 take office;

(2) To invalidate any complaint served, or any investigation, inquiry, or hearing held or commenced, or any determination, or decision rendered by the Commission prior to such date; or

(3) To invalidate, abate, or discontinue any action, suit, trial, or proceeding commenced by or against such Commission prior to such date. (Dec. 15, 1926, 44 Stat. 921, ch. 8, § 2; 1973 Ed., § 43-203.)

Cross references. — As to saving existing laws, orders, rules, and regulations, see § 43-105.

As to actions pending on effective date of Chapters 1 to 10 of this title, see § 43-106.

§ 43-405. Office of the General Counsel.

There is established within the Public Service Commission an Office of the General Counsel. The head of such Office shall be the General Counsel, who shall be appointed by and serve at the pleasure of the Commission. The Commission may, upon the recommendation of the General Counsel and within the limits of appropriations therefor, employ and fix the compensation of such other employees, including attorneys, in accordance with the provisions of subchapters VIII and X of Chapter 6 of Title 1, as may be necessary to assist the General Counsel in carrying out his duties under this section. The duty of the General Counsel shall be, and he is authorized, to represent and appear for the Commission in all actions and proceedings under this section, or under or in reference to any act, order, or proceeding of the Commission, and, if directed to do so by the Commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence and prosecute all actions and proceedings directed or authorized by the Commission, and to expedite, in everyway possible, final and just determination of all such actions and proceedings; to advise the Commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the Commission and of the members thereof, and generally to perform all duties and services as attorney and counsel which the Commission may reasonably require. The Commission may enforce its orders to any case by legal or equitable remedy in any court of competent jurisdiction, and it shall be the duty of the General Counsel to represent the Commission in every such proceeding. Notwithstanding the foregoing, it shall not be the duty of the General Counsel, nor is he authorized, to prosecute any criminal case for the imposition of any penalty or punishment provided for in this section. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 91; 1973 Ed., § 43-204; Feb. 26, 1981, D.C. Law 3-124, § 2, 28 DCR 90.)

Legislative history of Law 3-124. — Law 3-124 was introduced in Council and assigned Bill No. 3-269, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 14, 1980 and November 25, 1980, respectively. Signed by the Mayor on December 22, 1980, it was assigned Act No. 3-331 and transmitted to both Houses of Congress for its review.

The general grant of power in this section is insufficient to authorize suit under 15 U.S.C. § 15c, which provides that any attorney general of a state may bring a civil

action in a *parens patriae* capacity to secure relief from antitrust violations, by the District of Columbia Public Service Commission's General Counsel in the absence of some more explicit authorization by Congress or the District of Columbia Council. *United States v. Western Elec. Co.*, 900 F.2d 283 (D.C. Cir.), cert. denied, 498 U.S. 911, 112 L. Ed. 2d 238, 111 S. Ct. 283 (1990).

Cited in *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 477 A.2d 1079 (1984); *Potomac Elec. Power Co. v. District of Columbia Gov't*, 651 F. Supp. 907 (D.D.C. 1986).

§ 43-406. People's Counsel — Appointment, compensation, qualifications; personnel; duties.

(a) There is hereby established within the Public Service Commission of the District of Columbia, established by § 43-401, an office to be known as the "Office of the People's Counsel." The Office shall be a party, as of right, in any

investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning any public utility operating in the District of Columbia.

(b) There shall be at the head of such Office the People's Counsel who shall be appointed by the Mayor of the District of Columbia, by and with the advice and consent of the Council of the District of Columbia, and who shall serve for a term of 3 years. The People's Counsel shall be entitled to receive compensation at the maximum rate as may be established from time to time for GS-16 of the General Schedule under § 5332 of Title 5 of the United States Code or equivalent compensation pursuant to subchapter XII of Chapter 6 of Title 1. No person shall be appointed to the position of People's Counsel unless that person is admitted to practice before the District of Columbia Court of Appeals. Before entering upon the duties of such office, the People's Counsel shall take and subscribe the same oaths as that required by the commissioners of the Commission, including an oath or affirmation before the Clerk of the Superior Court of the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia.

(c) The People's Counsel is authorized to employ or to retain and fix the compensation of employees or independent contractors, including attorneys, necessary to perform the functions vested in the People's Counsel by this section, and § 43-612, as amended by the Utility Regulatory Assessment Clarification Act of 1984, and prescribe their authority and duties.

(d) The People's Counsel:

(1) Shall represent and appeal for the people of the District of Columbia at hearings of the Commission and in judicial proceedings in the District of Columbia courts when these proceedings and hearings involve the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission;

(2) May represent and appeal for the people of the District of Columbia at proceedings before related federal regulatory agencies and commissions and federal courts when those proceedings involve the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission;

(3) May represent and appear for petitioners appearing before the Commission for the purpose of complaining in matters of rates or services;

(4) May investigate independently, or within the context of formal proceedings before the Commission, the services given by, the rates charged by, and the valuation of the properties of the public utilities under the jurisdiction of the Commission; and

(5) May develop means to otherwise assure that the interests of the users of the products of or services furnished by public utilities under the jurisdiction of the Commission are adequately represented in the course of proceedings before the Commission, federal or District of Columbia courts, or federal regulatory agencies and commissions involving those interests, including public information dissemination, consultative services, and technical assistance. (Mar. 4, 1913, 37 Stat. 993, ch. 150, § 8, par. 91A; Dec. 15, 1926, 44 Stat.

921, ch. 8, § 3; 1952 Reorg. Plan No. 5, § 2(b), 66 Stat. 824; 1973 Ed., § 43-205; Jan. 2, 1975, 88 Stat. 1975, Pub. L. 93-614, § 1; Mar. 3, 1979, D.C. Law 2-139, § 3205(gg), 25 DCR 5740; Mar. 14, 1985, D.C. Law 5-153, § 2, 31 DCR 6440.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

As to People's Counsel serving as advocate for consumers in rate hearings before Superintendent of Insurance, see § 35-1703.

As to service of notice of certain filings on Office of People's Counsel, see § 43-518.

As to authority of Public Service Commission to assess public utilities for expenses of litigation including fees incurred by the Office of the People's Counsel, see § 43-612.

Section references. — This section is referred to in §§ 1-604.6, 1-637.1, 43-407, and 43-1451.

Legislative history of Law 2-139. — See note to § 43-401.

Legislative history of Law 5-153. — See note to § 43-306.

References in text. — The "Utility Regulatory Assessment Clarification Act of 1984," referred to in subsection (c) of this section, is D.C. Law 5-153.

Generally. — D.C. Law 5-153 is not a charter amendment. First, the act does not directly change the charter at all. Second, whatever indirect effect the act may have on the Public Service Commission certainly does not rise to

the level of a charter amendment. *Potomac Elec. Power Co. v. District of Columbia Gov't*, 651 F. Supp. 907 (D.D.C. 1986).

Scope of investigations. — Whether within the context of formal proceedings before the Commission, or independently structured, an Office of the People's Counsel investigation is limited in scope. Thus, the so-called "independent" investigative authority has imposed upon it a relevancy test which clearly circumscribes this authority within prudential limits. *Potomac Elec. Power Co. v. District of Columbia Gov't*, 651 F. Supp. 907 (D.D.C. 1986).

Cited in *Atlantic Tel. Co. v. Public Serv. Comm'n*, App. D.C., 390 A.2d 439 (1978); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 399 A.2d 43 (1979); *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 402 A.2d 14, cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979); *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 450 A.2d 1187 (1982); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 455 A.2d 391 (1982); *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 477 A.2d 1079 (1984); *Estrada v. Potomac Elec. Power Co.*, App. D.C., 488 A.2d 1359 (1985).

§ 43-407. Same — Appropriations.

There are authorized to be appropriated, to carry out the purposes of §§ 43-406 and 43-612, such sums as may be necessary for fiscal year 1980 and for each fiscal year thereafter. (1973 Ed., § 43-205a; Jan. 2, 1975, 88 Stat. 1977, Pub. L. 93-614, § 3; Oct. 20, 1979, D.C. Law 3-34, § 2, 26 DCR 1119.)

Legislative history of Law 3-34. — Law 3-34 was introduced in Council and assigned Bill No. 3-70, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 17, 1979 and July 31, 1979,

respectively. Signed by the Mayor on August 31, 1979, it was assigned Act No. 3-100 and transmitted to both Houses of Congress for its review.

Cited in *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 477 A.2d 1079 (1984).

§ 43-408. Employees; expenses; expenditures.

The Commission shall have the power in each and every instance to employ and to prescribe the duties of such officers, clerks, stenographers, typewriters, inspectors, experts, and employees as it may deem necessary to carry out the provisions of Chapters 1-10 of this title. The Commission is hereby authorized, within the appropriation made by Congress, to incur and pay incidental expenses for postage, printing, blanks, books, law books, books of reference, and periodicals, stationery, binding, rebinding, repairing and preservation of records, desks, office furniture and supplies, traveling expenses of the Commission, the commissioners, and every officer, agent, and employee thereof,

and all other general expenses reasonably necessary to be incurred in carrying out the purposes of Chapters 1-10 of this title. All payments and disbursements, as provided in Chapters 1-10 of this title, shall be made by the Disbursing Officer of the District of Columbia upon proper vouchers, certified as required by the Commission; and the Commission is hereby also granted power and authority to designate and appoint during its pleasure such officers, clerks, inspectors, and employees of the District of Columbia and members of the Metropolitan Police force of the District of Columbia to perform any of the duties which the Commission may from time to time, respectively, assign to them, and to employ any assistance within the limits of the appropriations for its use made by act of Congress. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 95; 1973 Ed., § 43-206; Mar. 3, 1979, D.C. Law 2-139, § 3205(o), 25 DCR 5740.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-139. — See note to § 43-401.

Disbursing Office abolished. — The Disbursing Office, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952, established under the direction and control of the Board of Commissioners a Department of General Administration headed by a Director. The Order transferred to the Director of General Administration all of the functions of the abolished Office. Reorganization Order No. 20 established the Finance Office in the Department of General Administration. Included in the Finance Office were an Office of the Assessor, the Office of the Collector of Taxes, the Disbursing Office, and the Accounting Office headed by an Accounting Officer. The function of approving vouchers was delegated to the Accounting Officer by that Order. Reorganization Order No. 20 was replaced by Organization Order No. 121.

The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order No. 3 and Organization Order No. 121 were revoked by Organization Order No. 3 of the Commissioner of the District of Columbia, dated December 13, 1967. Organization Order No. 3 established within the newly created Department of General Administration, a Finance Office and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting (including approving vouchers) as set forth in that Order were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. The Office of Budget and Financial Management was replaced by Organization Order No. 50, dated December 31, 1974, which Order established the Office of Budget and Management Systems. The Office of Budget and Management Systems was replaced by Mayor's Order No. 79-5, dated January 2, 1979, which Order established the Office of Budget and Resources Development.

§ 43-409. Authority of Interstate Commerce Commission withdrawn; rules and regulations to remain in force; joint action in regulation of public-service company.

(a) The authority vested by law in the Interstate Commerce Commission by virtue and under the Act of Congress, approved May 23, 1908, entitled "An Act authorizing certain extensions to be made in the lines of the Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway of Washington, and the Capital Traction Company, in the District of Columbia and for other purposes" shall no

longer be exercised by the Interstate Commerce Commission: Provided, that the orders, rules, and regulations made by the Interstate Commerce Commission shall continue to be in force until changed, repealed, altered, or amended by the Commission created by Chapters 1-10 of this title, which said Commission is hereby given power and jurisdiction to issue and, at its pleasure, to revoke all permits, or licenses, to carry Chapters 1-10 of this title into effect, and its rules and regulations shall be valid and binding on all public-service corporations and on all persons.

(b) The Commission may act jointly or concurrently with any official board or commission of the United States or any state thereof in any proceeding relating to the regulation of any public-service company. Any such action may be under an interstate compact or agreement, or under the concurrent power of the States to regulate interstate commerce, or as an agency of the federal government, or otherwise. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96; Aug. 11, 1971, 85 Stat. 320, Pub. L. 92-94, § 1(c); 1973 Ed., § 43-207.)

Cross references. — As to rules and regulations, see § 43-403.

References in text. — The Capital Transit Company succeeded to the powers and obligations of the Capital Traction Company and of

the Washington Railway and Electric Company, referred to in subsection (a) of this section, pursuant to the Act of January 14, 1933, 47 Stat. 752.

§ 43-410. Orders for repairs; improvement in equipment, service.

Whenever the Commission shall be of opinion, after hearing had upon its own motion or upon complaint, that repairs, improvements, or changes in any street railroad, gas plant, electric plant, telephone line, telegraph line, pipeline, waterpower plant, or the facilities of any common carrier ought reasonably to be made, or that any addition of service or equipment ought reasonably to be made thereto, or that the vehicles or cars of any street railroad or common carrier are unclean, insanitary, uncomfortable, inconvenient, or improperly equipped, operated, or maintained, or are in need of paint, or unsightly in appearance, or that any addition ought reasonably to be made thereto, in order to promote the comfort or convenience of the public or employees, or in order to secure adequate service or facilities, the Commission shall have power to make and serve an order directing that such repairs, improvements, changes, or additions to service or equipment be made within a reasonable time and in a manner to be specified therein, and every such public utility is hereby required and directed to obey every such order of the Commission. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96; 1973 Ed., § 43-208.)

Cross references. — As to new construction, see § 43-516.

As to care, maintenance, and repair of street cars, see Chapter 2 of Title 44.

Cited in Washington Ry. & Elec. Co. v. Dis-

trict of Columbia, 10 F.2d 999 (D.C. Cir. 1926); Washington, Marlboro & Annapolis Motor Lines v. Public Utils. Comm'n, 114 F. Supp. 321 (D.D.C. 1950), aff'd, 206 F.2d 490 (1953).

§ 43-411. Authority of Mayor not affected; ordinances of Commissioners not affected unless modified by Commission.

All the duties, powers, and authority of the Mayor of the District of Columbia shall continue and remain in full force and effect notwithstanding Chapters 1-10 of this title; and all powers, authority and duties of the municipality known as the District of Columbia and all rights vested in said municipality shall continue and remain in full force and effect notwithstanding Chapters 1-10 of this title. All the lawful ordinances and regulations made by the Commissioners of the District of Columbia as such, and all other lawful municipal ordinances and regulations, shall continue and remain in full force and effect, and may be altered, changed, or amended, and new ordinances and regulations may be made by the Mayor of the District of Columbia, acting as such, hereafter, notwithstanding Chapters 1-10 of this title; provided, that when any order of the Commission created by Chapters 1-10 of this title shall be made which shall be inconsistent and repugnant to any municipal ordinance or regulation, or any ordinance or regulation made or to be made by the Mayor of the District of Columbia, acting as such, then and in such event the order of the Commission created by Chapters 1-10 of this title shall be given full force and effect, notwithstanding such municipal ordinance or regulation. (Mar. 4, 1913, 37 Stat. 996, ch. 150, § 8, par. 99; 1973 Ed., § 43-209.)

Cross references. — As to rules and regulations, see § 43-403.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 5. SERVICE, VALUATION, ACCOUNTS.

Subchapter I. General Provisions.

Sec.

- 43-501. Utility service and charges to be just and reasonable; certification required.
- 43-502. Use of equipment of other companies; application to Commission to require such use in event of disagreement.
- 43-503. Commission to compel compliance with laws and ordinances.
- 43-504. [Repealed].
- 43-505. Commission to ascertain cost of construction, replacement value, outstanding stock; information to be printed in annual report.
- 43-506. Property to be valued as of time of evaluation.
- 43-507. Valuation; notice and hearing; statement of valuation to be filed.
- 43-508. Revaluation.
- 43-509. Uniform accounts to be rendered; separate account of other business may be required.
- 43-510. Commission to prescribe forms of books and records.
- 43-511. Commission to furnish blank forms.
- 43-512. Utilities to have offices in the District of Columbia; books and records to be kept in the District; records may be kept at general office of utility.
- 43-513. Accounts to be closed annually; verified balance sheet to be filed with Commission; copy of balance sheet to Congress.
- 43-514. Examination and audit of accounts; allocation of items to accounts; authority of agents, accountants, and examiners.
- 43-515. Depreciation account; rates of depreciation; application of depreciation fund.
- 43-516. Commission to keep informed of new construction; construction account.

Sec.

- 43-517. Sliding scale of rates and dividends.
- 43-518. Utilities to furnish accounts and reports; information to be included; notice of certain filings to be served on People's Counsel; disclosure of information and documents by investigated utility.
- 43-519. Annual report of Commission.
- 43-520. Commission to fix adequate and serviceable standards; regulations for testing products, service, and meters.
- 43-521. Examination and test of appliances.
- 43-522. Material and equipment for tests; entry on premises of utilities for purpose of tests.
- 43-523. Schedule of rates to be filed; existing rates to remain in force until changed.
- 43-524. Rules and regulations affecting rates to be filed.
- 43-525. Copy of rate schedule to be available for public inspection.
- 43-526. Schedule of joint rates to be filed.
- 43-527. Change in schedule; notice.
- 43-528. New schedules to be filed; summaries of rates to be provided upon request.
- 43-529. Utility not to receive greater or less compensation than fixed in schedule.
- 43-530. Commission may prescribe changes in form of schedule.

Subchapter II. Master-Metered Apartment Buildings

- 43-541. Definitions.
- 43-542. Opportunity for tenants to receive service in own names; payments made by tenants.
- 43-543. Appointment of receiver; termination.
- 43-544. Penalties.
- 43-545. Exclusiveness of remedy.
- 43-546. Findings required prior to termination of service.
- 43-547. Regulations.

Subchapter I. General Provisions.

§ 43-501. Utility service and charges to be just and reasonable; certification required.

(a) Every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any public utility for a facility or service furnished, rendered, or to be furnished or rendered, shall be

reasonable, just, and nondiscriminatory. Every unjust, unreasonable, or discriminatory charge for the facility or service is prohibited and unlawful. Every public utility is required to obey the lawful orders of the Commission created by Chapters 1-10 of this title.

(b) No public utility shall furnish a service or facility, directly or indirectly, without first proceeding and proving to the satisfaction of the Public Service Commission ("Commission") that the present and future public convenience and necessity requires that the service be provided or the facility be offered. Upon application of a public utility for a certificate of present and future public convenience and necessity pursuant to this subsection, the Commission, upon a hearing and notice to the public, shall issue an order granting or denying the application, in whole or in part, stating the reasons for the action. The Commission may prescribe terms and conditions upon a grant of an application for a certificate of present and future public convenience and necessity as the Commission, in its discretion, decides are necessary to further the present and future public convenience and necessity. The Commission is authorized to promulgate any rules necessary to implement this subsection.

(c) Every public utility that was regulated by the Commission and that furnished a service or facility within the District of Columbia as of June 27, 1989 is deemed to have been granted a certificate of public convenience and necessity.

(d) The Commission is authorized to promulgate any rules necessary to implement this section. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 2; 1973 Ed., § 43-301; Sept. 20, 1989, D.C. Law 8-29, § 2, 36 DCR 4742; Oct. 19, 1989, D.C. Law 8-47, § 2, 36 DCR 5786.)

Cross references. — As to liberal construction of chapter, see § 43-103.

As to criminal penalties for failure to obey laws or rules, regulations or orders of Commission, see §§ 43-306 to 43-308.

As to Commission's authority to regulate rates, see § 43-311.

As to saving clauses for previous laws, orders, rules and regulations, and pending proceedings, see § 43-404.

As to discriminatory rates, see §§ 43-529 and 43-302 to 43-304.

As to rates of electric power companies, see § 43-1207.

Legislative history of Law 8-29. — Law 8-29 was introduced in Council and assigned Bill No. 8-297. The Bill was adopted on first and second readings on May 30, 1989 and June 13, 1989, respectively. Signed by the Mayor on June 27, 1989, it was assigned Act No. 8-52 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-47. — Law 8-47 was introduced in Council and assigned Bill No. 8-321, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the

Mayor on August 1, 1989, it was assigned Act No. 8-80 and transmitted to both Houses of Congress for its review.

Deregulation of streetlighting service. — Section 130 of H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that the Public Service Commission is authorized to order and to approve the deregulation of streetlighting service to the District of Columbia as provided in its opinion and order in Formal Case No. 813, dated July 12, 1984 (Order No. 8056), § 43-402, this section, and § 43-1207, and provided that the provisions of this opinion and order regarding deregulation of streetlighting service are hereby ratified and declared to be in effect as of July 12, 1984 and shall continue to be in effect until revoked or rescinded.

This section is deliberately broad and gives the Commission authority to formulate its own standards and to exercise its ratemaking function free from judicial interference, provided the rates fall within a zone of reasonableness which assures that the Commission is safeguarding the public interest. *Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n*, App. D.C., 432 A.2d 343 (1981).

Authority to design rates is deliberately broad. — The statutory authority of the Commission to design reasonable, just, and nondiscriminatory rates is deliberately broad. If the overall effect of a rate order is found to be reasonable, judicial inquiry must stop; any infirmities in the method employed to determine those rates becomes immaterial. *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 450 A.2d 1187 (1982).

Every unjust, unreasonable or discriminatory charge is declared unlawful under this section. *District of Columbia v. Potomac Elec. Power Co.*, App. D.C., 402 A.2d 430 (1979).

Under this section, the term "service" is used in its broadest and most inclusive sense. *Pollak v. Public Utils. Comm'n*, 191 F.2d 450 (D.C. Cir. 1951), rev'd on other grounds, 343 U.S. 451, 72 S. Ct. 813, 96 L. Ed. 1068 (1952).

"Just and reasonable" charge mandate allows Commission broad discretion within zone of reasonableness. — The Public Service Commission is not required to adopt as "just and reasonable" any particular rate level. Rather, its constitutional and statutory mandate allows the Commission broad discretion to set rates, without judicial interference, provided that the rates fall within a zone of reasonableness. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 457 A.2d 776 (1983).

Regulation of extent to which federally-approved surcharges affect retail rates. — The Public Service Commission lacks authority to regulate the extent to which Federal Energy Regulatory Commission-approved Gas Research Institute surcharges may be reflected in the retail rates charged by Washington Gas Light Company. *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 508 A.2d 930 (1986).

Yellow pages advertising, was not public utility "service" or "facility" within the meaning of this section, and hence the Commission lacked jurisdiction to regulate the rates and practices of a telephone company with respect to its yellow pages classified telephone directory. *Classified Directory Subscribers Ass'n v. Public Serv. Comm'n*, 383 F.2d 510 (D.C. Cir. 1967).

Not all services offered by public utility are regulable under this section. *Classified Directory Subscribers Ass'n v. Public Serv. Comm'n*, 383 F.2d 510 (D.C. Cir. 1967).

Individual has no positive right to compel power company to furnish service to him contrary to its own rules and regulations duly approved by the Commission, and the company's right to suspend or discontinue the service in accordance with its notice can neither be controlled nor restrained. *Lewis v. Potomac Elec. Power Co.*, 64 F.2d 701 (D.C. Cir. 1933).

Procedural criteria for setting aside or approving rate orders. — Whereas a Commission rate order cannot be set aside unless a petitioner makes a "convincing showing" that it is unreasonable, unjust or discriminatory, the same rate order cannot be approved by a reviewing court without remand for clarification unless and until the Commission has complied with the Administrative Procedure Act (§ 1-1501 et seq.) by specifying its criteria for the order and clearly explaining how its findings rationally support that determination. *Washington Pub. Interest Org. v. Public Serv. Comm'n*, App. D.C., 393 A.2d 71 (1978), cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979).

Although the Court of Appeals will not set aside a rate order unless the party challenging it makes a "convincing showing" that it is unreasonable, unjust, or discriminatory, at the same time the court cannot approve a rate order unless the Commission has fully and clearly explained why it has entered the particular order under review. *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 498 A.2d 1167 (1985).

Factors for determining whether rates discriminatory. — In determining whether there has been discrimination within the meaning of this section, the Commission must consider whether customers have paid different amounts for the same service under the same circumstances. *Atlantic Tel. Co. v. Public Serv. Comm'n*, App. D.C., 390 A.2d 439 (1978); *Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n*, App. D.C., 432 A.2d 343 (1981); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 462 A.2d 1105 (1983).

Not every rate variation supports claim of unlawful discrimination. — Not every variation in the rate charged for a particular service supports a claim of unlawful discrimination; so long as the classifications are reasonable, a difference in rates may exist between different classes of customers. *Atlantic Tel. Co. v. Public Serv. Comm'n*, App. D.C., 390 A.2d 439 (1978); *Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n*, App. D.C., 432 A.2d 343 (1981).

"Discriminatory charges" rendered illegal by this section are rates charged customers, not the rate of return on shareholders' equity. Although shareholders have a due process right to an opportunity to earn a certain level of return on their investment, their earnings are unaffected by the manner in which the overall rate is attributed to particular classes of customers. *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 450 A.2d 1187 (1982).

Legality of past rates cannot be challenged in rate proceeding, and past excessive earnings belong to the gas company and past losses must be borne by the company. *Washington Gas Light Co. v. Baker*, 188 F.2d 11

(D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Composition of gas rate base is within province of the Commission, and the Commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other than the traditional one which depends on the finding of a rate base. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Inclusion of items in gas rate base must meet test of justness and reasonableness to the consumer as well as to the investor. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Rate determination based on findings in prior proceeding. — The Commission not inquiring into issues necessary to determination of fair rate of return in gas rate proceeding could not rely on finding in some prior rate proceeding, where risk factor had been materially reduced in recent years and pertinent local conditions and economic factors had not remained static. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Inclusion of abandoned property in rate base. — If the Commission includes abandoned property in gas rate base, protection of consumer interest requires that such treatment of abandoned property be offset in the rate of return. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Compensation for investors' risk of obsolescence in rates. — In gas rate proceeding, compensation to investors for risk of obsolescence may be made either through inclusion of obsolescence as one of the elements used in calculating depreciation expense or as risk considered in fixing the permissible rate of return, so if in the past the risk of obsolescence was so provided for, abandoned property should not be included in the rate base. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Gas company's expenditure for adapting customer's appliances to natural gas to permit changeover from manufactured to natural gas is a proper item of expense currently deductible from operating revenues for rate purposes and can be treated as a deferred expense allocable over period of future years. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Interstate system rates. — Where a power company served the District of Columbia and

parts of Virginia and Maryland and certain interstate consumers, and system-wide method was pursued in determining rates for District of Columbia consumers, such rates would have to be reasonable, just, and nondiscriminatory as a part of, or in relation to, the system rates contained in the schedules for those areas and services beyond jurisdiction of the Commission so that District consumers would not subsidize non-District consumers or vice versa. *Capital Transit Co. v. Public Utils. Comm'n*, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

Where a power company served the District of Columbia and parts of Virginia and Maryland and certain interstate consumers, use by the Commission of the power company's system-wide revenues and revenues needs as part of the process of reaching an approved rate for District of Columbia was proper. *Capital Transit Co. v. Public Utils. Comm'n*, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

Emergency rates. — If gas rates are to be granted for emergency purposes in a summary proceeding before the Commission, provision should be made for adjustment of subsequent rates, as under the sliding scale arrangement, if upon a statutory full rate hearing it should be found that the emergency rates had produced either excessive or inadequate returns. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Rates for supplying local distributors. — The Commission is without power to fix rates at which gas piped from another state will be supplied to local distributing company. *Galloway v. Bell*, 11 F.2d 558 (D.C. Cir.), cert. denied, 271 U.S. 666, 46 S. Ct. 482, 70 L. Ed. 1140 (1926).

Prudent investment theory of gas rate base valuation contemplates that rates will enable investor to maintain his original prudent investment intact until it is recovered through annual charges to depreciation expense reflected in a depreciation reserve, and if a unit of property resulting from prudent investment becomes obsolete before it has been recovered in full by the investor it is not necessarily erroneous as a matter of law for the Commission to include such property in the rate based until such recovery has occurred, and such a course may be necessary to assure efficiency and progress in the art and continued attraction of capital to the enterprise. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

The prudent investment theory of gas rate regulation requires determination by the Commission of the rate base and of a rate of return on that rate base sufficient to produce adequate

revenues above operating expenses, including depreciation, to pay interest on bonds, dividends on stock and maintain financial integrity of the enterprise, and it is essential to inquiry on fair rate of return that there be a study of capital costs of the business, such as service on debt and dividends on stock, in light of returns on other investments in other enterprises having similar risk factor. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Differences in utility's rate of return from different customer classes need not specifically be supported by class-cost considerations; differences can be based not only on quantity, but also on nature, time and pattern of use so as to achieve reasonable efficiency and economic operation. *Apartment House Council of Metro. Washington, Inc. v. Public Serv. Comm'n, App. D.C.*, 332 A.2d 53 (1975); *Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n, App. D.C.*, 432 A.2d 343 (1981).

Any cut-off point involves some element of arbitrariness as does any classification, but the need to draw a line does not convert an otherwise reasonable classification into an arbitrary classification. *Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n, App. D.C.*, 432 A.2d 343 (1981).

Zone of reasonableness from standpoint of investor. — From the investor standpoint, the lower boundary of the zone of reasonableness is one which is not confiscatory in the constitutional sense. *Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n, App. D.C.*, 432 A.2d 343 (1981).

And from standpoint of consumer. — From the consumer standpoint, the upper boundary of the zone of reasonableness cannot be so high that the rate would be classified as exorbitant. *Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n, App. D.C.*, 432 A.2d 343 (1981).

Commission may allow utility to use automatic fuel adjustment clause in its rate design. — Allowing utility to use automatic fuel adjustment clause in its rate design was not beyond the authority of the Public Service Commission, was not inconsistent with the policies of the Public Utilities Act or with the system of fixed rates, did not constitute retroactive ratemaking, and did not provide for dollar-for-dollar recovery of past fuel costs. *People's Counsel v. Public Serv. Comm'n, App. D.C.*, 472 A.2d 860 (1984).

Party challenging rate increase must make a "convincing showing" of unreasonableness in a rate order to enable the reviewing court to set aside that order; the failure of the challenging party to carry this burden does not mandate affirmance. *People's Counsel v.*

Public Serv. Comm'n, App. D.C., 462 A.2d 1105 (1983).

Organization of answering services has standing to challenge rate-making decision. — An organization of telephone answering services doing business in the District, composed of rate-paying customers of the telephone company, has standing to maintain an appeal challenging Commission's rate-making decision. *District of Columbia Tel. Answering Serv. Comm. v. Public Serv. Comm'n, App. D.C.*, 476 A.2d 1113 (1984).

Commission awarding higher gas rates because of past inequities to investors must be supported by evidence in record, and if the factual premise that past earnings were not sufficient to compensate investors for inadequate depreciation charges is true the Commission can properly require the burden to be borne by consumers or to be shared by investors and consumers depending upon the circumstances. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Surcharge to recoup past losses. — The general principle precluding a utility from charging higher rates in the future in order to recoup past losses does not preclude imposition of a surcharge to recover revenues lost by electric utility while rate order, which was found to be arbitrary and unreasonable, was in effect; losses occurred after fair rate of return had been determined and lost revenues were shown, by abundant evidence, to have been result of arbitrary and unreasonable rulings of the Public Service Commission; imposition of surcharge to recoup past losses does not constitute retroactive rate making. *Potomac Elec. Power Co. v. Public Serv. Comm'n, App. D.C.*, 380 A.2d 126 (1977), rehearing en banc, App. D.C., 402 A.2d 14, cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979).

Just and reasonable charge mandate is consideration in landmark demolition determination. — The mandate of this section, that utility service and charges be just and reasonable, is a valid consideration in determining whether a permit to demolish an historic landmark owned by a utility is "necessary" under subsection (e) of § 5-1004. *Don't Tear It Down, Inc. v. District of Columbia Dep't of Hous. & Community Dev., App. D.C.*, 428 A.2d 369 (1981).

Order prohibiting utility deposits until after credit check. — The Commission's order prohibiting gas and electric utility from requiring initial deposits from residential customers until after credit check had been made is not arbitrary and capricious. *Washington Gas Light Co. v. Public Serv. Comm'n*, 334 F. Supp. 1062 (D.D.C. 1971).

Court of Appeals affirmed Commission's rate-making decisions. See *District of Columbia Tel. Answering Serv. Comm. v. Public Serv. Comm'n*, App. D.C., 476 A.2d 1113 (1984).

Cited in *Fay v. Miller*, 183 F.2d 986 (D.C. Cir. 1950); *Jackson v. Public Serv. Comm'n*, App. D.C., 590 A.2d 517 (1991).

§ 43-502. Use of equipment of other companies; application to Commission to require such use in event of disagreement.

Every utility doing business in the District of Columbia having tracks, conduits, subways, poles, wires, switchboards, exchanges, works, or other equipment shall, for a reasonable compensation, permit the use of the same by any other public utility whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owners or other users of such equipment; nor in any substantial detriment to the service to be rendered by such owners or other users. In case of failure to agree upon such use, or the conditions or compensation for such use, any public utility or any person, firm, copartnership, association, or corporation interested may apply to the Commission, and if after investigation the Commission shall ascertain that public convenience and necessity require such use and that it would not result in irreparable injury to the owners or other user of such equipment nor in any substantial detriment to the service to be rendered by such owners or other users of such equipment, it shall by order direct that such use be permitted and prescribe the conditions and compensation for such joint use. Such use so ordered shall be permitted and such conditions and compensation so prescribed shall be the lawful conditions and compensation to be observed, followed, and paid, subject to recourse to the courts upon the complaint of any interested party, as hereinafter provided, which provisions, so far as applicable, shall apply to any action arising on such complaint so made. Any such order of the Commission may be from time to time revised by the Commission upon application of any interested party or upon its own motion after hearing and notice by order in writing. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 3; 1973 Ed., § 43-302.)

Cross references. — As to joint use of bridges, see §§ 7-505, 7-507, 7-508 and 7-511.

As to joint use of certain railroad facilities, see §§ 7-1413, 7-1416 to 7-1424 and 44-208 to 44-212.

As to rules and regulations relative to inspec-

tions, tests, audits, investigations, and hearings, see § 43-602.

As to use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company, see § 43-1208.

§ 43-503. Commission to compel compliance with laws and ordinances.

The Commission shall have power, after hearing and notice by order in writing, to require and compel every public utility to comply with the provisions of Chapters 1-10 of this title, and with all other laws of the United States applicable, and any municipal ordinance or regulation relating to said public utility, and to conform to the duties upon it thereby imposed or by the provisions of its own charter, if any charter has or shall be granted it; provided,

that nothing herein contained shall be held to relieve any public utility, its officers, agents, or servants, from any punishment, fine, forfeiture, or penalty for violation of any such law, ordinance, regulation, or duty imposed by its charter, nor to limit, take away, or restrict the jurisdiction of any court or other authority which on March 4, 1913, had or which may thereafter have power to impose any such punishment, fine, forfeiture, or penalty. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 4; 1973 Ed., § 43-303.)

Cross references. — As to penal provisions, see Chapter 3 of this title.

As to evidentiary effect of certified copies of orders, see § 43-912.

Jurisdiction to order investigation. — Where transit company for the District installed radio loudspeakers in its vehicles for radio broadcasts of music and commercial announcements, upon protest of passengers, the

Commission had jurisdiction to order an investigation. *Pollak v. Public Utils. Comm'n*, 191 F.2d 450 (D.C. Cir. 1951), rev'd on other grounds, 343 U.S. 451, 72 S. Ct. 813, 96 L. Ed. 1068 (1952).

Cited in *Classified Directory Subscribers Ass'n v. Public Serv. Comm'n*, 383 F.2d 510 (D.C. Cir. 1967); *Jordan v. Public Serv. Comm'n*, App. D.C., 622 A.2d 1106 (1993).

§ 43-504. Proposed changes in law to be submitted to Commission; hearings; recommendations to Congress.

Repealed. Mar. 14, 1985, D.C. Law 5-153, § 3(a), 31 DCR 6440.

Legislative history of Law 5-153. — Law 5-153 was introduced in Council and assigned Bill No. 5-225, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on October 30, 1984, and November 7,

1984, respectively. Disapproved by the Mayor on November 30, 1984, the Bill was reenacted by the Mayor on November 30, 1984, the Bill was reenacted by the Council on December 4, 1984, assigned Act No. 5-217 and transmitted to both Houses of Congress for review.

§ 43-505. Commission to ascertain cost of construction, replacement value, outstanding stock; information to be printed in annual report.

The Commission shall ascertain, as soon and as nearly as practicable, the amount of money expended in the construction and equipment of every public utility, including the amount of money expended to procure any right-of-way; also the amount of money it would require to secure the right-of-way, reconstruct any roadbed, track, depots, cars, conduits, subways, poles, wires, switchboards, exchanges, offices, works, storage plants, power plants, machinery, and any other property or instrument not included in the foregoing enumeration used in or useful to the business of such public utility, and to replace all the physical properties belonging to the public utility. It shall ascertain the outstanding stock, bonds, debentures, and indebtedness, and the amount, respectively, thereof, the date when issued, to whom issued, to whom sold, the price paid in cash, property, or labor therefor, what disposition was made of the proceeds, by whom the indebtedness is held, so far as ascertainable, the amount purporting to be due thereon, the floating indebtedness of the public utility, the credits due the public utility, other property on hand belonging to it, the judicial or other sales of said public utility, its

property or franchises, and the amounts purporting to have been paid, and in what manner paid therefor, and the taxes paid thereon. The Commission shall also ascertain in detail the gross and net income of the public utility from all sources, the amounts paid for salaries to officers and the wages paid to its employees, and the maximum hours of continuous service required of each class. Whenever the information required by this section is obtained it shall be printed in the annual report of the Commission. In making such investigation the Commission may avail itself of any information in possession of any department of the government of the United States or of the Mayor of the District of Columbia. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 6; 1973 Ed., § 43-305.)

Cross references. — As to form and requisites of records, see §§ 43-509 to 43-519.

As to rates and rate making, see § 43-601.

As to rules and regulations relative to inspections, tests, audits, investigations, and hearings, see § 43-602.

As to payment of expenses, see § 43-612.

As to application to court for instructions, see § 43-904.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Methods of valuation. — The composition of gas rate base is within province of the Commission, and Commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other than the traditional one which depends on the finding of a rate base. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Valuation provisions are not binding on the Commission in gas rate proceedings. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Normally, the unit for rate-making purposes for electricity is entire inter-connected operating property of utility, without regard to geographical subdivisions, though conditions may be such as to require or permit segregation of a smaller unit. *Leeman v. Public Utils. Comm'n*, 104 F. Supp. 553 (D.D.C. 1952), rev'd on other grounds sub nom. *Capital Transit Co. v. Public Util. Comm'n*, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

Consideration of goodwill in valuation. — The court, when fixing rate base valuation of street railway property on appeal from the Commission, could properly include the goodwill of one of the companies that had previously consolidated. *Public Utils. Comm'n v. Capital Traction Co.*, 17 F.2d 673 (D.C. Cir. 1927).

Segregation of properties of interstate utility for valuation. — If part of the business of an electric power company is subject to state regulation and part is subject to federal regulation, the state, in fixing rates, must segregate properties used in the intrastate business and establish intrastate rates on basis of the segregated properties as a rate base, and costs must be allocated as between intrastate and interstate business, but such segregation is not mandatory if business of company is subject to regulation by 2 or more states, no part of it being subject to federal supervision. *Leeman v. Public Utils. Comm'n*, 104 F. Supp. 553 (D.D.C. 1952), rev'd on other grounds sub nom. *Capital Transit Co. v. Public Util. Comm'n*, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

Interstate utility considered single enterprise. — Where an electric power company supplied from the same powerhouse electric current to customers in the District of Columbia and to customers in Maryland and Virginia, the Commission, in determining whether rates for electric power should be increased, properly treated the business of the company as a single enterprise and refused to segregate properties or allocate costs attributable to the part of the business done in the District of Columbia.

Leeman v. Public Utils. Comm'n, 104 F. Supp. 553 (D.D.C. 1952), rev'd on other grounds sub nom. *Capital Transit Co. v. Public Util. Comm'n*, 213 F.2d 176 (D.C. Cir.), cert. denied,

348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

Cited in *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 455 A.2d 384 (1982).

§ 43-506. Property to be valued as of time of evaluation.

The Commission shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 7; 1973 Ed., § 43-306.)

Cross references. — As to Office of People's Counsel Agency Fund, see § 43-612.

As to application to court for instructions, see § 43-904.

Methods of valuation. — The composition of gas rate base is within province of Commission, and Commission can adopt any method of valuation so long as end result of rate order is not unjust and unreasonable and can even use a method of calculating rates other than the traditional one which depends on the finding of a rate base. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Valuation provisions are not binding on the Commission in gas rate proceedings. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 751, 95 L. Ed. 686 (1951).

Rate order not invalid for violation of

this section. — Where a consent decree fixed the rate base, established a sliding scale of rates, and provided that if rates yielded more than a certain per cent return, one-half of excess should be used in reduction of future rates, and the Commission, after a full hearing on proper notice, directed the electric company to file new lower rate schedules, the new rate order, which would allow fair return on fair valuation, was not invalid on the ground that the company had not consented thereto nor on the ground that the valuation requirements of this section had not been complied with. *Potomac Elec. Power Co. v. Public Utils. Comm'n*, 158 F.2d 521 (D.C. Cir. 1946), cert. denied, 331 U.S. 816, 67 S. Ct. 1303, 91 L. Ed. 1834 (1947).

Cited in *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 455 A.2d 384 (1982).

§ 43-507. Valuation; notice and hearing; statement of valuation to be filed.

Before final determination of such value the Commission shall, after notice of not less than 30 days to the public utility, hold a public hearing as to such valuation in the manner hereinafter provided for a hearing, which provisions, so far as applicable, shall apply to such hearing. The Commission shall, within 10 days after such valuation is determined, serve a statement thereof upon the public utility interested, and shall file a like statement with the District committees in Congress. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 8; 1973 Ed., § 43-307.)

Cross references. — As to rules and regulations relative to inspections, tests, audits, investigations, and hearings, see § 43-602.

As to payment of expenses of proceedings, see § 43-612.

§ 43-508. Revaluation.

The Commission may at any time, on its own initiative, make a revaluation of the property of any public utility. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 9; 1973 Ed., § 43-308.)

Cross references. — As to payment of expenses of revaluating, see § 43-612.

As to application to court for instructions, see § 43-904.

Cited in *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 455 A.2d 384 (1982).

§ 43-509. Uniform accounts to be rendered; separate account of other business may be required.

Every public utility shall keep and render to the Commission, in the manner and form prescribed by the Commission, uniform accounts of all business transacted. Every public utility engaged directly or indirectly in any other business than that of the conduct of a street railway, or the production, transmission, or furnishing of heat, light, water, or power, or the conveyance of telegraph or telephone messages, shall, if required by the Commission, keep and render separately to the Commission in like manner and form the accounts of all such other business, in which case all the provisions of Chapters 1-10 of this title shall apply with like force and effect to the books, accounts, papers, and records of such other business. (Mar. 4, 1913, 37 Stat. 978, ch. 150, § 8, par. 10; 1973 Ed., § 43-309.)

Cross references. — As to witnesses and production of books, records, and accounts, see § 43-605.

As to investigation of records and accounts, see § 43-606.

As to duty of utility companies to furnish information, records, and accounts, see § 43-607.

§ 43-510. Commission to prescribe forms of books and records.

The Commission shall prescribe the forms of all books, accounts, papers, and records required to be kept, and every public utility is required to keep and render its books, accounts, papers, and records accurately and faithfully in the manner and form prescribed by the Commission, and to comply with all directions of the Commission relating to such books, accounts, papers, and records. Insofar as practicable for the purposes of Chapters 1-10 of this title, the form prescribed shall be the form accepted by the Interstate Commerce Commission. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 11; 1973 Ed., § 43-310.)

Cross references. — As to criminal penalties, see § 43-305.

Broad discretion is conferred upon the Commission in regulating accounting procedures of the utilities under its jurisdiction. *District of Columbia Transit Sys. v. Public Utils. Comm'n*, 292 F.2d 734 (D.C. Cir. 1961).

Commission order held not arbitrary or

capricious. — An order of the Commission directing a transit company to transfer a sum from the proceeds of the sale of property from its earned surplus account to 3 different accounts was not unreasonable, arbitrary, or capricious. *District of Columbia Transit Sys. v. Public Utils. Comm'n*, 292 F.2d 734 (D.C. Cir. 1961).

§ 43-511. Commission to furnish blank forms.

The Commission shall cause to be prepared suitable blanks for carrying out the purposes of Chapters 1-10 of this title, and shall when necessary furnish

such blanks to each public utility. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 12; 1973 Ed., § 43-311.)

§ 43-512. Utilities to have offices in the District of Columbia; books and records to be kept in the District; records may be kept at general office of utility.

Each public utility shall have an office within the District of Columbia in which it shall keep all such books, accounts, papers, and records as shall be required by the Commission to be kept within the District of Columbia. No books, accounts, papers, or records required by the Commission to be kept within the District of Columbia shall be at any time removed from the District of Columbia, except upon such condition as may be prescribed by the Commission: Provided, that public utilities operating in the District of Columbia and elsewhere who have their general or executive offices outside of the District, may continue to keep their books, accounts, records, and so forth, at their executive or general offices, such public utilities being required, however, to produce before the Commission such books, accounts, records, and papers from time to time as the Commission may order. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 13; 1973 Ed., § 43-312.)

Cross references. — As to rules and regulations relative to inspections, tests, audits, investigations, and hearings, see § 43-602.

§ 43-513. Accounts to be closed annually; verified balance sheet to be filed with Commission; copy of balance sheet to Congress.

The accounts shall be closed annually on the 31st day of December, and a balance sheet of that date promptly taken therefrom. On or before the 1st day of February following such balance sheet, together with such other information as the Commission shall prescribe, verified by an owner or officer of the public utility, shall be filed with the Commission, and a copy thereof transmitted to Congress. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 14; 1973 Ed., § 43-313.)

§ 43-514. Examination and audit of accounts; allocation of items to accounts; authority of agents, accountants, and examiners.

The Commission shall provide for the examination and audit of all accounts, and all items shall be allocated to the accounts in the manner prescribed by the Commission. The agents, accountants, or examiners employed by the Commission shall have authority, under the direction of the Commission, to inspect and examine any and all books, accounts, papers, records, and memoranda kept by such public utility. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 15; 1973 Ed., § 43-314.)

Cross references. — As to rules and regulations, see § 43-602.

As to inspection of books, see § 43-604.

As to payment of expense of audit, see § 43-612.

Broad discretion is conferred upon the Commission in regulating accounting procedures of the utilities under its jurisdiction. *District of Columbia Transit Sys. v. Public Utils. Comm'n*, 292 F.2d 734 (D.C. Cir. 1961).

Commission order held not arbitrary or capricious. — An order of the Commission directing a transit company to transfer a sum from the proceeds of the sale of property from its earned surplus account to 3 different accounts was not unreasonable, arbitrary, or capricious. *District of Columbia Transit Sys. v. Public Utils. Comm'n*, 292 F.2d 734 (D.C. Cir. 1961).

§ 43-515. Depreciation account; rates of depreciation; application of depreciation fund.

Every public utility shall carry a proper and adequate depreciation account. The Commission shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility. These rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the Commission. The Commission may make changes in such rates of depreciation from time to time as it may find to be necessary. The Commission shall also prescribe rules, regulations, and forms of accounts regarding such depreciation which the public utility is required to carry into effect. The Commission shall provide for such depreciation in fixing the rates, tolls, and charges to be paid by the public. All moneys in this fund may be expended in keeping the property of such public utility in repair and good and serviceable condition for the use to which it is devoted, or invested, and, if invested, the income from the investments shall also be carried in the depreciation fund. This fund and the proceeds thereof shall be used for no other purpose than as provided in this section, unless with the consent and by order of the Commission. (Mar. 4, 1913, 37 Stat. 979, ch. 150, § 8, par. 16; 1973 Ed., § 43-315.)

Cross references. — As to rules and regulations, see § 43-403.

§ 43-516. Commission to keep informed of new construction; construction account.

The Commission shall keep itself informed of all new construction, extensions, and additions to the property of all public utilities, and shall prescribe the necessary forms, regulations, and instructions to the officers and employees of all public utilities for the keeping of construction accounts, which shall clearly distinguish all operating expenses and new construction. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 17; 1973 Ed., § 43-316.)

Cross references. — As to rules and regulations, see § 43-403.

As to Commission's authority to require repairs, see § 43-410.

Commission's review of Washington Gas

Light's budget estimate met statutory obligation. — Although the Commission found several aspects of the Washington Gas Light Company's (WGL) proposed budget to be problematic and targeted those matters for future

consideration, its determination that, on the whole, the WGL's estimates were the "best available" was sufficient to meet the Commission's statutory obligation to review the WGL's future construction plans in advance of consid-

ering the extent to which those costs should be included in the rate base. *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 482 A.2d 404 (1984).

§ 43-517. Sliding scale of rates and dividends.

Nothing in Chapters 1-10 of this title shall be taken to prohibit a public utility, with the consent of the Commission, from providing a sliding scale of rates and dividends according to what is commonly known as the Boston sliding scale, or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the Commission, after investigation, to be reasonable and just and not inconsistent with the purposes of Chapters 1-10 of this title. Such arrangement shall be under the supervision and regulation of the Commission. The Commission shall ascertain, determine, and order such rates, charges, and regulations, and the duration thereof, as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges, and regulations as the Commission may ascertain and determine to be necessary and reasonable, and the right to alter or amend all orders relative thereto, is reserved and vested in the Commission notwithstanding any such arrangement and mutual agreement. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 18; 1973 Ed., § 43-317.)

Cross references. — As to power of Commission to alter or amend unreasonable or discriminatory rates, regulations, or practices, see § 43-311.

As to rules and regulations see § 43-403.

As to rate making, see § 43-601.

As to payment of expenses of investigation, see § 43-612.

Order permitting advance deposits from those unable to establish financial responsibility is not discriminatory. *Riegel v. Public Utils. Comm'n*, 48 F.2d 1023 (D.C. Cir.), cert. denied, 284 U.S. 644, 52 S. Ct. 24, 76 L. Ed. 548 (1931).

Emergency Fleet Corporation. — The Emergency Fleet Corporation, although organized as a private corporation under District of Columbia laws, is entitled to the benefit of the provisions of the Post Roads Act of 1866 giving it special rates for telegraph service. *Emergency Fleet Corp. v. Western Union Tel. Co.*, 275 U.S. 415, 48 S. Ct. 198, 72 L. Ed. 345 (1928).

Cited in *Washington Gas Light Co. v. Byrnes*, 137 F.2d 547 (D.C. Cir. 1943), aff'd sub nom. *Vinson v. Washington Gas Light Co.*, 321 U.S. 489, 64 S. Ct. 731, 88 L. Ed. 883 (1944).

§ 43-518. Utilities to furnish accounts and reports; information to be included; notice of certain filings to be served on People's Counsel; disclosure of information and documents by investigated utility.

(a) Each public utility shall furnish to the Commission in such form and at such times as the Commission shall require, such accounts, reports, and information as shall show in itemized detail; depreciation; salaries and wages; legal expenses; taxes and rentals; quantity and value of material used; receipts from residuals, by-products, services, or other sales; total and net costs; net and gross profits; dividends and interest; surplus or reserve; prices paid by

consumers; and in addition such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the Commission may prescribe, in order to show completely and in detail the entire operation of the public utility in furnishing its product or service to the public.

(b) A notice of filing of all reports, applications, petitions, tariffs, and all other documents that affect the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission that are filed by any public utility with the Commission or with federal and District of Columbia agencies, courts, and commissions shall be concurrently served on the Office of the People's Counsel at the time of filing and shall include the subject and purpose of the filing.

(c) In connection with any investigation or proceeding under § 43-406 (d) (1), (3), or (4), as amended by the Utility Regulatory Assessment Clarification Act of 1984, the Office shall have the right to obtain from the public utility investigated all information and documents reasonably relevant and material to the investigation or proceeding. Should any public utility refuse or fail to produce the reasonably relevant information or documents in a timely manner, the Office may, by motion, petition the Commission to issue an order compelling its production. When necessary to protect the disclosure of trade secrets and other confidential research, development, or commercial information, the Commission may, where appropriate, issue a protective order placing conditions on the release of the information. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 19; 1973 Ed., § 43-318; Mar. 14, 1985, D.C. Law 5-153, § 3(b), 31 DCR 6440.)

Cross references. — As to appointment, qualifications, compensation, etc., of People's Counsel, see § 43-406.

As to rules and regulations, see § 43-602.

As to reports by gas companies, see § 43-1106.

As to annual reports by street railroads, see § 44-222.

Legislative history of Law 5-153. — See note to § 43-306.

References in text. — The "Utility Regulatory Assessment Clarification Act of 1984," referred to in the first sentence of subsection (c) of this section, is D.C. Law 5-153.

Limitations on discovery. — There are several layers of protection afforded against unconstitutional discovery. First, the statute limits the data gathering authority of the Office of the People's Counsel to information reasonably relevant and material to the investigation or proceedings. Second, in the event of noncompliance by the plaintiffs, the OPC has no authority to order compliance but must petition the Public Service Commission for an order compelling production. Third, the PSC has the authority to protect from disclosure plaintiff's trade secrets and other confidential research, development, or commercial information. *Potomac Elec. Power Co. v. District of Columbia Gov't*, 651 F. Supp. 907 (D.D.C. 1986).

Rate determination based on findings in prior proceeding. — Commission not inquiring into issues necessary to determination of fair rate of return in gas rate proceeding could not rely on finding in some prior rate proceeding, where risk factor had been materially reduced in recent years and pertinent local conditions and economic factors had not remained static. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Emergency rates. — If gas rates are to be granted for emergency purposes in a summary proceeding before the Commission, provision should be made for adjustment of subsequent rates, as under the sliding scale arrangement, if upon a statutory full rate hearing it should be found that the emergency rates had produced either excessive or inadequate returns. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Cited in *Byrnes v. Flanagan*, 48 F. Supp. 703 (D.D.C.), rev'd on other grounds sub nom. *Washington Gas Light Co. v. Byrnes*, 137 F.2d 547 (D.C. Cir. 1943), aff'd sub nom. *Vinson v. Washington Gas Light Co.*, 321 U.S. 489, 64 S. Ct. 731, 88 L. Ed. 883 (1944).

§ 43-519. Annual report of Commission.

The Commission shall publish annual reports showing its proceedings relating to all the public utilities of each kind in the District of Columbia, and such other occasional reports as it may deem advisable. The Commission shall also publish in its annual reports the value of all property actually used and useful for the convenience of the public, of every public utility as to whose rates, charges, service, or regulations any hearing has been held by the Commission or the value of whose property has been ascertained by it under the provisions of Chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 20; 1973 Ed., § 43-319.)

§ 43-520. Commission to fix adequate and serviceable standards; regulations for testing products, service, and meters.

The Commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other condition pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examining and testing such product or service and for the measurement thereof. It shall establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements, and every public utility is required to carry into effect all orders issued by the Commission relative thereto. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 21; 1973 Ed., § 43-320.)

Cross references. — As to rules and regulations, see § 43-403.

As to testing gas and electric meters, rules and regulations, see § 43-1003.

As to testing quality of gas, see § 43-1005.

§ 43-521. Examination and test of appliances.

The Commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliance tested upon payment of the fees fixed by the Commission. The Commission shall declare and establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance be found defective or incorrect to the disadvantage of the consumer or user. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 22; 1973 Ed., § 43-321.)

§ 43-522. Material and equipment for tests; entry on premises of utilities for purpose of tests.

The Commission may purchase such materials, apparatus, and standard measuring instruments for such examination and tests as it may deem

necessary. The Commission, its agents, experts, or examiners, shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided for in Chapters 1-10 of this title, and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 23; 1973 Ed., § 43-322.)

Cross references. — As to criminal penalties for destruction of apparatus belonging to Commission, see § 43-309.

§ 43-523. Schedule of rates to be filed; existing rates to remain in force until changed.

Every public utility shall file with the Commission, within a time to be fixed by the Commission, schedules, which shall be open to public inspection, showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed by it within the District of Columbia, or for any service in connection therewith or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed the rates, tolls, and charges allowed by law on March 4, 1913, and shall be the lawful rates, tolls, and charges within the District of Columbia, and shall remain and be in force until set aside by the Commission. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 24; 1973 Ed., § 43-323.)

Cross references. — As to changing existing rates, see § 43-601.

Utility contracting for fixed rate relinquishes right to seek increase. — By contracting with a customer to provide service at a fixed rate, a utility gives up its right to apply for a rate increase. *Atlantic Tel. Co. v. Public Serv. Comm'n*, App. D.C., 390 A.2d 439 (1978).

Commission unable to regulate Maryland utility. — Limitations upon the Commission forbid any attempt at regulation by it of the manner or price at which gas shall be delivered by a Maryland company to its consumers. *Galloway v. Bell*, 11 F.2d 558 (D.C.

Cir.), cert. denied, 271 U.S. 666, 46 S. Ct. 482, 70 L. Ed. 1140 (1926).

Telephone company new service. — Absent a controlling statutory provision, no reason exists to construe the telephone company's new service offering, a technologically improved PBX system, as essentially different from a rate change application, wherein the Commission approval is statutorily required. *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 378 A.2d 1085 (1977).

Cited in *Professional Answering Serv., Inc. v. C & P Tel. Co.*, App. D.C., 565 A.2d 55 (1989).

§ 43-524. Rules and regulations affecting rates to be filed.

Every public utility shall file with and as a part of such schedule all rules and regulations that in any manner affect the rates charged or to be charged for any service. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 25; 1973 Ed., § 43-324.)

Cross references. — As to rate making, see § 43-601.

Cited in *Professional Answering Serv., Inc. v. C & P Tel. Co.*, App. D.C., 565 A.2d 55 (1989).

§ 43-525. Copy of rate schedule to be available for public inspection.

A copy of so much of said schedules as the Commission shall deem necessary for the use of the public shall be printed in plain type and kept on file in every station and office of such public utility where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public and so as to be conveniently inspected. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 26; 1973 Ed., § 43-325.)

Section references. — This section is referred to in § 43-526.

§ 43-526. Schedule of joint rates to be filed.

Where a schedule of joint rates or charges is, or may be, in force between 2 or more public utilities, such schedule shall in like manner be printed and filed with the Commission, and so much thereof as the Commission shall deem necessary for the use of the public shall be filed in every such station or office, as provided in § 43-525. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 27; 1973 Ed., § 43-326.)

§ 43-527. Change in schedule; notice.

No change shall be made in any schedule, including schedules of joint rates, except upon 10 days notice to the Commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof 10 days prior to the time the same are to take effect; provided, that the Commission, upon application of any public utility, may prescribe a less time within which a reduction may be made. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 28; 1973 Ed., § 43-327.)

Cross references. — As to rate making, see § 43-601.

As to changes to conform to orders of Commission, see § 43-901.

Telephone company new service. — Absent a controlling statutory provision, no reason exists to construe the telephone company's new service offering, a technologically improved PBX system, as essentially different from a rate change application, wherein Public

Service Commission approval is statutorily required. *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 378 A.2d 1085 (1977).

Approval of repagination of tariff not approval of tariff. — Approval of the repagination of a tariff by letter of acceptance under this section was not a substantive approval of the tariff. *Professional Answering Serv., Inc. v. C & P Tel. Co.*, App. D.C., 565 A.2d 55 (1989).

§ 43-528. New schedules to be filed; summaries of rates to be provided upon request.

(a) Copies of all new schedules shall be filed, as hereinbefore provided, in every station and office of such public utility where payments are made by consumers or users 10 days prior to the time the same are to take effect, unless the Commission shall prescribe a less time.

(b) Summaries of all rate schedules, including all rates, explanations, and conditions of service, applicable as to the type of service received by a ratepayer

shall be provided as of right by the public utility to any ratepayer upon request and without expense to the ratepayer. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 29; 1973 Ed., § 43-328; Mar. 14, 1985, D.C. Law 5-153, § 3(c), 31 DCR 6440.)

Cross references. — As to rate making, see § 43-601.

Legislative history of Law 5-153. — See note to § 43-503.

§ 43-529. Utility not to receive greater or less compensation than fixed in schedule.

It shall be unlawful for any public utility to charge, demand, collect, or receive a greater or less compensation for any service performed by it within the District of Columbia, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect, or receive any rate, toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed as provided in Chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 981, ch. 150, § 8, par. 30; 1973 Ed., § 43-329.)

Cross references. — As to criminal penalties, see §§ 43-302 and 43-304.

As to discriminatory rates, see § 43-501.

As to rate making, see § 43-601.

Rate schedule superseded contract. — Once the utility, in conformance with the rate increase for interruptible customers granted in formal case had filed a subsequent rate schedule with the Commission, rate schedule referred to in interruptible customers contract ceased to exist — regardless of whether their rate schedule still referred to it; neither the filed rate doctrine nor this section, its statutory counterpart, had been violated, because the subsequent Rate Schedule No. 3 had superseded the original Rate Schedule I. *Watergate E., Inc. v. District of Columbia Public Serv. Comm'n*, App. D.C., 662 A.2d 881 (1995).

Court order for tenants' committee to contract with utility companies. — Since substandard units had different utility equipment, rented at different prices, and had varying number of occupants, and there was no recognized formula for distributing gas and electrical charges among the users, it is not appropriate for the court to order tenants to organize a committee which would enter into contracts with utility companies for continuation of services, in tenant's proceeding for equitable relief directing that utility services be continued after owner refused to honor utility bills. *Masszonias v. Washington*, 315 F. Supp. 529 (D.D.C. 1970).

§ 43-530. Commission may prescribe changes in form of schedule.

The Commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 31; 1973 Ed., § 43-330.)

Cross references. — As to rate making, see § 43-601.

Temporary addition of § 43-531. — Section 9 of D.C. Law 12-(Act 12-279) added a § 43-531, to read as follows:

"A public utility shall provide to the organizational unit of the District government, or any successor organizational unit, that is responsi-

ble for administering or supervising the administration of the District's State Plan under title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), in response to an administrative subpoena issued pursuant to section 27c(a)(2), financial or other information concerning a customer that is necessary to establish, modify or

enforce a child support order or a spousal support order in which the spouse or former spouse is living with a child for whom the spousal support obligor also owes support.”

Section 16(b) of D.C. Law 12-(Act 12-279) provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary addition of § 43-531, see § 9 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Subchapter II. Master-Metered Apartment Buildings.

§ 43-541. Definitions.

For the purposes of this subchapter:

(1) The term “apartment house” means any building or part thereof, not used primarily for transient occupancy, in which there are 3 or more apartments, each with one or more habitable rooms with kitchen and bathroom facilities exclusively for use of and under the control of the occupant thereof.

(2) The term “tenant” means any person who holds or possesses a habitation in subordination to the title of the owner of the premises in which such habitation is located, with the consent of the owner. (Sept. 13, 1980, D.C. Law 3-94, § 2, 27 DCR 3500.)

Legislative history of Law 3-94. — Law 3-94 was introduced in Council and assigned Bill No. 3-186, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 3, 1980 and June 17, 1980, respectively. Signed by the Mayor on July 9, 1980, it was assigned Act No. 3-216 and transmitted to both Houses of Congress for its review.

D.C. Law Review. — For article, “Tenants’ rights and the District of Columbia master meter act: A violation of due process,” see 2 D.C. L. Rev. 113 (1993).

Purpose of subchapter. — This subchapter was enacted to protect tenants living in master-metered apartment houses from loss of utility service because of a landlord’s failure to pay the utility bill and to protect utility companies from nonpayment for services they are required to provide. *Shannon & Luchs Co. v. Jeter*, App. D.C., 469 A.2d 812 (1983).

Cited in *Capitol Terrace, Inc. v. Shannon & Luchs, Inc.*, App. D.C., 564 A.2d 49 (1989); *Jordan v. Public Serv. Comm’n*, App. D.C., 622 A.2d 1106 (1993).

§ 43-542. Opportunity for tenants to receive service in own names; payments made by tenants.

(a) Wherever an owner, agent, lessor or manager of an apartment house is billed directly by an electric or gas company for utility service furnished to such apartment house not occupied exclusively by such owner, agent, lessor or manager, and such company has actual or constructive knowledge that the tenants of such apartment house are not the persons to whom the company sends its bills, such company shall not terminate such service for nonpayment of a delinquent account owed to such company by such owner, agent, lessor or manager unless such company provides an opportunity, where practicable, for such tenants to receive service in their own names, either individually or collectively, without any liability for the amount due while service was billed directly to the lessor, owner, agent or manager. Security deposits or guarantees of payment may only be required as provided in Part V of the Consumer Bill of Rights, Public Service Commission of the District of Columbia Order No. 6084

(15 DCMR 307) and the Public Service Commission of the District of Columbia Formal Case No. 760 (15 DCMR 409); provided, however, if it is not practicable for such tenants to receive service in their own names, the company shall not terminate service to such apartment house but may pursue the remedy provided in § 43-543.

(b) Any payments made by the tenants of any apartment house pursuant to subsection (a) of this section shall be deemed to be in lieu of an equal amount of rent or payment for use and occupancy and each tenant shall be permitted to deduct such amounts from any sum of rent or payment for use and occupancy due and owing or to become due and owing to the owner, agent, lessor or manager.

(c) Nothing in this section shall be construed to prevent the company from pursuing any other action or remedy at law or equity that it may have against the owner, agent, lessor or manager. (Sept. 13, 1980, D.C. Law 3-94, § 3, 27 DCR 3500; Feb. 24, 1987, D.C. Law 6-192, § 20, 33 DCR 7836.)

Legislative history of Law 3-94. — See note to § 43-541.

Legislative history of Law 6-192. — Law 6-192 was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986 and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

References in text. — “The Consumer Bill of Rights,” referred to in the second sentence of subsection (a) of this section, is now included as Chapter V of Title 15, D.C.M.R.

Effect of section. — This section prohibits the Washington Gas Light Company from terminating gas service to master-metered apartment buildings without first giving the tenants an opportunity to receive service in their own names. *Office of People’s Counsel v. Public Serv. Comm’n*, App. D.C., 482 A.2d 404 (1984).

Departure from settled rate making practice held permissible. — Since the Commission has found that enactment of this section resulted in a previously unforeseen, but now predictable and perhaps permanent, increase in the level of the Washington Gas Light Company’s (WGL) uncollectibles and because reliance on a 5-year average method would result in an underestimation of the WGL’s uncollectible accounts expense, the Commission’s decision to use the WGL’s current book uncollectible accrual rate rather than its 5-year average in calculating WGL’s allowance for uncollectible accounts is permissible. *Office of People’s Counsel v. Public Serv. Comm’n*, App. D.C., 482 A.2d 404 (1984).

Cited in *Washington Gas Light Co. v. Continental Mgt. Co.*, 110 WLR 2349 (Super. Ct. 1982); *Capitol Terrace, Inc. v. Shannon & Luchs, Inc.*, App. D.C., 564 A.2d 49 (1989).

§ 43-543. Appointment of receiver; termination.

(a)(1) Upon nonpayment of a delinquent account by the owner, agent, lessor, or manager of an apartment house who is billed directly by an electric or gas company for utility service furnished to such apartment house, such company, or the tenants residing in the affected apartment house, may petition the Superior Court of the District of Columbia for appointment of a receiver of the rents or payments for use and occupancy for such apartment house. The Chief Judge of the Superior Court or such Judge’s designee, upon presentation by the petitioner of a verified petition indicating such nonpayment of a delinquent account, shall immediately issue an order requiring such owner, agent, lessor, or manager, as respondent, to show cause why a receiver should not be appointed.

(2) The order of the Court, together with a copy of the verified petition, shall be served on the owner, agent, lessor, or manager at his last known address or by such other method as the Court may direct and shall be posted in a conspicuous place upon the apartment house in question.

(3) A hearing on the show cause order shall be held no later than 72 hours after its issuance or the first court day thereafter. Upon a prima facie showing by affidavit, testimony or otherwise, that delinquent utility bills on the subject apartment house remain unpaid, the Court shall forthwith appoint a receiver to collect rents or payments for use and occupancy from the tenants thereof and to pay current utility bills as hereinafter required. Prior to said hearing, respondent may file an answer to the petition raising such grounds of defense as respondent may have; except, that any set-offs, counterclaims, or third-party claims shall not be grounds for refusing to appoint a receiver.

(4) The receiver appointed by the Court shall have the authority to take such action as it deems necessary to collect all rents or payments for use and occupancy from the tenants of the apartment house in question in place of the owner, agent, lessor or manager. The receiver shall pay the utility company from such rents and payments for utility services provided by such company on and after the date of his appointment. The owner, agent, lessor or manager shall be liable for such reasonable fees and costs determined by the Court to be due the receiver, which fees and costs may be recovered from the rents or payments for use and occupancy under the control of the receiver; provided, however, that no such fees or costs shall be turned over until after payment of current utility bills on the apartment house has been made. Any monies remaining after such payments, fees and costs shall be turned over to the owner, agent, lessor, or manager. Upon order of the Court, the receiver shall become trustee of any escrow accounts or other funds established by the tenants or otherwise into which rents or payments for use and occupancy have been paid or are being held. The Court shall require accountings to be made by the receiver at such times as the Court determines to be just, reasonable and necessary.

(b) Any receivership established pursuant to subsection (a) of this section shall be terminated by the Court upon its finding that the arrearage which was the subject of the original petition has been satisfied, or that all tenants have agreed to assume liability in their own names for prospective service supplied by the utility company, or that the apartment house has been sold and the new owner has assumed liability for prospective service supplied by the utility company.

(c) Nothing in this section shall be construed to prevent the utility company from pursuing any other action or remedy at law or equity that it may have against the owner, agent, lessor or manager.

(d) Any owner, agent, lessor or manager who collects or attempts to collect any rent or payment for use and occupancy from any tenant of an apartment house subject to an order appointing a receiver pursuant to this section shall be found, after due notice and hearing, to be in contempt of court. (Sept. 13, 1980, D.C. Law 3-94, § 4, 27 DCR 3500.)

Section references. — This section is referred to in §§ 43-542 and 43-1654.

Legislative history of Law 3-94. — See note to § 43-541.

Attempted service, without more, will not satisfy service requirement under subsection (a)(2). — The requirement for service on the owner “at his last known address or by such other method as the Court may direct” cannot reasonably be interpreted to mean that attempted service without more, will suffice. *Potomac Elec. Power Co. v. Scoggins*, 110 WLR 2169 (Super. Ct. 1982).

Tenant association’s bank account representing amount of rent due held to be “other funds” within the meaning of subsection (a)(4) of this section and therefore due to the receiver as trustee. *Washington Gas Light Co. v. Continental Mgt. Co.*, 110 WLR 2349 (Super. Ct. 1982).

Receiver appointed under subsection (a)(4) of this section is not “person aggrieved” under § 16-1501. — A receiver appointed by the Court pursuant to subsection (a)(4) is not an agent of the owner but is,

instead, a representative of the Court and not “the person aggrieved” within the meaning of established law in a § 16-1501 proceeding. *Shannon & Luchs Co. v. Jeter*, App. D.C., 469 A.2d 812 (1983).

Authority of court appointed receiver to maintain summary suit for possession. — A receiver, appointed by the Court pursuant to this section to collect rents, may maintain a summary suit for possession in the Landlord and Tenant Branch of the Superior Court against a tenant who fails to pay rent only if the landlord is joined as an indispensable party-plaintiff pursuant to Super. Ct. Civ. R. 19(a). *Shannon & Luchs Co. v. Jeter*, App. D.C., 469 A.2d 812 (1983).

Immunity of receiver. — When a receiver acts within the scope of its authority, confining itself to the duties of its office, it shares the immunity of the appointing judge, even though it is alleged to have acted wrongly in performing those duties. *Capitol Terrace, Inc. v. Shannon & Luchs, Inc.*, App. D.C., 564 A.2d 49 (1989).

§ 43-544. Penalties.

Any wilful or malicious violation of this subchapter by any owner, agent, lessor, manager or any utility company shall be punishable by a fine of not more than \$500 or imprisonment for not more than 30 days, or both. (Sept. 13, 1980, D.C. Law 3-94, § 5, 27 DCR 3500.)

Legislative history of Law 3-94. — See note to § 43-541.

Cited in *Jordan v. Public Serv. Comm’n*, App. D.C., 622 A.2d 1106 (1993).

§ 43-545. Exclusiveness of remedy.

Nothing in this subchapter shall be construed to prevent the tenant of such apartment house from pursuing any other action or remedy at law or equity that it may have against the owner, agent, lessor, manager or company. (Sept. 13, 1980, D.C. Law 3-94, § 6, 27 DCR 3500.)

Legislative history of Law 3-94. — See note to § 43-541.

Cited in *Washington Gas Light Co. v. Continental Mgt. Co.*, 110 WLR 2349 (Super. Ct. 1982).

Cited in *Washington Gas Light Co. v. Conti-*

§ 43-546. Findings required prior to termination of service.

(a) It shall be unlawful for any gas or electric company to terminate service at the request of the owner, agent, lessor, or manager of an apartment house subject to this subchapter, unless the Public Service Commission first makes a finding that all units within the apartment house are not lawfully occupied, or the Public Service Commission finds that utility services provided by such company shall be provided by other means.

(b) Nothing in this section shall be construed to relieve any owner, agent, lessor, or manager of an apartment house from liability under a contract for the provision of utility services with a utility company until such time as the Public Service Commission makes its findings as required by subsection (a) of this section. (Sept. 13, 1980, D.C. Law 3-94, § 7, 27 DCR 3500.)

Legislative history of Law 3-94. — See note to § 43-541.

§ 43-547. Regulations.

The Public Service Commission shall adopt regulations necessary to carry out the purposes of this subchapter. Such regulations shall include, but not be limited to, establishing procedures by which the company shall notify tenants of an affected apartment house that monies are owed the company. (Sept. 13, 1980, D.C. Law 3-94, § 8, 27 DCR 3500.)

Legislative history of Law 3-94. — See note to § 43-541.

CHAPTER 6. RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS.

- | | |
|---|--|
| <p>Sec.
43-601. Existing rates continued; schedules to be filed; application to change rates; review of ruling by Court of Appeals.
43-602. Commission may adopt rules and regulations.
43-603. Commission to keep informed of business conduct of utilities.
43-604. Inspection of books and examination of officers of utilities.
43-605. Production of records of utilities; attendance of witnesses; duties of United States Attorney and Corporation Counsel.
43-606. Appointment of investigating agents; powers.
43-607. Utilities to furnish information required by Commission; maps, books, reports to be delivered on request.
43-608. Investigation of unjust discriminatory rates, schedules, or services; no order to be entered without formal hearing.
43-609. Public notice of rate applications or changes in conditions of service; opportunity for public response; notice to utility; setting time and place for hearing and investigation.
43-610. Notice as to hearings; compulsory attendance of witnesses.</p> | <p>Sec.
43-611. Reasonable rates to be ordered; notice to affected utility.
43-612. Expenses of investigation to be borne by utility; deposit for costs; limitation of expenditures in hearings; reimbursement fee.
43-613. Application of amendment to § 43-612.
43-614. Separate hearings on complaints; complaints not to be dismissed because of absence of direct damage.
43-615. Summary investigation.
43-616. Hearings after summary investigation.
43-617. Notice; hearing to be conducted as though complaint had been filed.
43-618. Utility may make complaint.
43-619. Commissioners and agents may administer oaths, issue subpoenas; proceeding to punish for contempt.
43-620. Witness fees.
43-621. Testimony may be taken by deposition.
43-622. Record of proceedings to be kept; testimony to be taken stenographically.
43-623. Certified copy of transcript to be received in evidence; copy to be furnished without cost.</p> |
|---|--|

§ 43-601. Existing rates continued; schedules to be filed; application to change rates; review of ruling by Court of Appeals.

(a) Unless the Commission shall otherwise order, it shall be unlawful for any public utility within the District of Columbia to demand, collect, or receive a greater compensation for any service than the charge fixed on the lowest schedule of rates for the same service under the law in force on March 4, 1913.

(b) Every public utility in the District of Columbia shall, within 30 days after March 4, 1913, file in the office of the Commission copies of all schedules of rates and charges, including joint rates, in force on March 4, 1913.

(c) Any public utility desiring to advance or discontinue any such rate or rates may make application to the Commission in writing, stating the advance in or discontinuance of the rate or rates desired, giving the reasons for such advance or discontinuance.

(d) Upon receiving such application the Commission shall fix a time and place for hearing, and give such notice to interested parties as shall be proper and reasonable; if, after such hearing and investigation, the Commission shall find that the change or discontinuance applied for is reasonable, fair, and just, it shall grant the application, either in whole or in part.

(e) Any public utility being dissatisfied with any order of the Commission made under the provisions of this section may commence a proceeding against it in the District of Columbia Court of Appeals in the manner as is in Chapters 1-10 of this title provided, which action shall be tried and determined in the same manner as is in Chapters 1-10 of this title provided. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 94; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 588, Pub. L. 91-358, title I, § 168(a)(4); 1973 Ed., § 43-401.)

Cross references. — As to liberal construction of Chapters 1 to 10 of this title, see § 43-103.

As to saving clause for laws, regulations, or orders and pending proceedings, see §§ 43-105 and 43-106.

As to criminal penalties for discriminatory rates, see § 43-302.

As to penalty for refusal to give information, testimony, records, or accounts, see § 43-305.

As to penalty for failure to obey laws, rules, orders, or regulations, see § 43-306.

As to power of Commission to alter or amend unreasonable or discriminatory rates, regulations, or practices, see § 43-311.

As to prohibition of discriminatory rates, see § 43-501.

As to valuation of public utilities, see §§ 43-505 to 43-508.

As to requirement for accounts, see § 43-509.

As to sliding scale of rates and dividends, see § 43-517.

As to requirement of itemized accounts and reports, see § 43-518.

As to filing schedules of rates and charges, see § 43-523.

As to investigation of unreasonable or discriminatory rates, see § 43-608.

As to changing rates, see § 43-611.

As to summary investigation of rates, see § 43-615.

As to complaint by utility company for change of rate or service, see § 43-618.

As to alteration, revocation, or amendment of orders, see § 43-902.

As to rates for gas companies, see § 43-1107.

As to rates for electric power companies, see § 43-1207.

As to street railroads, see §§ 44-207 and 44-212.

Power to fix public utility rates is legislative power which has been delegated by Congress to the Commission, and in its exercise, within constitutional limits, discretion of Commission may not be controlled even by courts. *Washington Gas Light Co. v. Byrnes*, 137 F.2d 547 (D.C. Cir. 1943), *aff'd sub nom. Vinson v. Washington Gas Light Co.*, 321 U.S. 489, 64 S. Ct. 731, 88 L. Ed. 883 (1944).

Rate making is primarily a legislative process, and the Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and Commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), *cert. denied*, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

To aid process of rate making, Commission may make findings upon evidence concerning conditions and events beyond its regulatory jurisdiction if such conditions and events are thought to affect rates to be determined by the Commission. *Capital Transit Co. v. Public Utils. Comm'n*, 213 F.2d 176 (D.C. Cir.), *cert. denied*, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

Commission's power to grant emergency rate relief derives from an implied rather than express statutory power and therefore the Commission should exercise its power to grant emergency relief with restraint. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 457 A.2d 776 (1983).

Proponent of rate order has burden of proving that the proposed rates are just and reasonable and that the expenditures relied upon as a basis for the rates are themselves reasonable. *Atlantic Tel. Co. v. Public Serv. Comm'n*, App. D.C., 390 A.2d 439 (1978).

Expedited compliance procedures. — Commission acted within the scope of its powers in permitting unregulated telephone company to file individual case basis tariffs pursuant to Commission's expedited compliance procedures rather than requiring formal notice and comment rate-making procedures under § 43-601(d). See *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 571 A.2d 206 (1990).

Rate case. — To qualify as a "rate case," a proceeding must both set a rate and include a formal hearing. *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 572 A.2d 410 (1990).

Criteria for setting aside or approving rate orders. — Whereas a Commission rate order cannot be set aside unless a petitioner makes a “convincing showing” that it is unreasonable, unjust or discriminatory, the same rate order cannot be approved by a reviewing court without remand for clarification unless and until the Commission has complied with the Administrative Procedures Act (§ 1-1501 et seq.) by specifying its criteria for the order and clearly explaining how its findings rationally support that determination. *Washington Pub. Interest Org. v. Public Serv. Comm’n, App. D.C.*, 393 A.2d 71 (1978), cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979).

Although the Court of Appeals will not set aside a rate order unless the party challenging it makes a “convincing showing” that it is unreasonable, unjust, or discriminatory, at the same time the court cannot approve a rate order unless the Commission has fully and clearly explained why it has entered the particular order under review. *C & P Tel. Co. v. Public Serv. Comm’n, App. D.C.*, 498 A.2d 1167 (1985).

Unit of power used as basis for rate. — Ordinarily, in determining an electric power rate, the question whether a smaller unit of electric power should be used as a basis for rate making is a matter of discretion for the regulatory agency. *Leeman v. Public Utils. Comm’n*, 104 F. Supp. 553 (D.D.C. 1952), rev’d on other grounds sub nom. *Capital Transit Co. v. Public Util. Comm’n*, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

End-of-period rate base. — The Public Service Commission did not act arbitrarily, or double charge electric power rate payers, by adopting an end-of-period rate base and by increasing the overall fair rate of return allowed, thus assertedly taking account of the effects of inflation twice. *Goodman v. Public Serv. Comm’n*, 497 F.2d 661 (D.C. Cir. 1974).

Utility contracting for fixed rate relinquishes right to seek increase. — By contracting with a customer to provide service at a fixed rate, a utility gives up its right to apply for a rate increase. *Atlantic Tel. Co. v. Public Serv. Comm’n, App. D.C.*, 390 A.2d 439 (1978).

Rate changes under provision of original service agreement. — Under a provision of an original service agreement that furnishing of steam and chilled water would be subject to a regulation to extent lawfully prescribed by any local regulatory commission having jurisdiction, that if during term of agreement such public regulatory authority prescribed different rates such rates would supersede rates specified in agreement and that either purchaser or seller had right at any time to request regulatory authority to fix just and reasonable rates, the Public Service Commission had power to change rates and to grant each party the right

to seek rate changes. *Watergate Imp. Ass’n v. Public Serv. Comm’n, App. D.C.*, 326 A.2d 778 (1974).

Jurisdiction over intrastate transportation. — Bus and streetcar transportation between points in the District of Columbia and points on the Virginia side of the Potomac River, which operations were performed within territorial limits of the District of Columbia municipal zone and involved intrastate transportation subject to regulation by the Commissions of Virginia and the District of Columbia, was not interurban but urban transportation, and, as such, it was not within jurisdiction of Interstate Commerce Commission to regulate fares for such transportation. *Capital Transit Co. v. United States*, 55 F. Supp. 51 (D.D.C. 1944).

Rate determination for interstate utility. — Where electric power company supplied from the same powerhouse electric current to customers in the District of Columbia and to customers in Maryland and Virginia, the Commission, in determining whether rates for electric power should be increased, properly treated the business of the company as a single enterprise and refused to segregate properties or allocate costs attributable to the part of the business done in the District of Columbia. *Leeman v. Public Utils. Comm’n*, 104 F. Supp. 553 (D.D.C. 1952), rev’d on other grounds sub nom. *Capital Transit Co. v. Public Util. Comm’n*, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

Where a power company served the District of Columbia and parts of Virginia and Maryland and certain interstate consumers, ascertainment of rate base on basis of system-wide operations of the well integrated power company without allocation of its properties, costs, or revenues to the different jurisdictions served was not illegal in itself nor upon facts peculiar to power company’s case. *Capital Transit Co. v. Public Utils. Comm’n*, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

Allocation of rate increase between jurisdictions. — It was not unreasonable, in allocating systemwide rate increase as between the District of Columbia and the state of Maryland, for the Public Service Commission to let the share of the revenue increase follow the share of the total test-years electricity sales applicable to each jurisdiction. *Goodman v. Public Serv. Comm’n*, 497 F.2d 661 (D.C. Cir. 1974).

Consideration of plant under construction in rate base. — Where the Public Service Commission, in including plant under construction in rate base, could not determine whether impact of the work in progress upon net operating income, when plant was completed, would be substantial, Commission property gave spe-

cific effect to such possibility in setting rate of return at lowest end of range found to be acceptable, and was not required to make compensating adjustment of test-year revenue and expenses. *Goodman v. Public Serv. Comm'n*, 497 F.2d 661 (D.C. Cir. 1974).

So long as capitalized interest is not included in rate base, inclusion of plant under construction provides no excessive compensation to utility. *Goodman v. Public Serv. Comm'n*, 497 F.2d 661 (D.C. Cir. 1974).

The Public Service Commission did not act arbitrarily, in rate-making case, by inclusion of plant under construction in rate base, although there were alternative methods available. *Goodman v. Public Serv. Comm'n*, 497 F.2d 661 (D.C. Cir. 1974).

Commission may allow utility to use automatic fuel adjustment clause in its rate design. — Allowing utility to use automatic fuel adjustment clause in its rate design was not beyond the authority of the Public Service Commission, was not inconsistent with the policies of the Public Utilities Act or with the system of fixed rates, did not constitute retroactive ratemaking, and did not provide for dollar-for-dollar recovery of past fuel costs. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 472 A.2d 860 (1984).

Imposition of surcharge to recoup losses. — The general principle precluding a utility from charging higher rates in the future in order to recoup past losses does not preclude imposition of a surcharge to recover revenues lost by electric utility while rate order, which was found to be arbitrary and unreasonable, was in effect; losses occurred after fair rate of return had been determined and lost revenues were shown, by abundant evidence, to have been result of arbitrary and unreasonable rulings of the Public Service Commission; imposition of surcharge to recoup past losses does not constitute retroactive rate making. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 380 A.2d 126 (1977), rehearing en banc, App. D.C., 402 A.2d 14, cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979).

Commission approval for new telephone service. — Absent a controlling statutory provision, no reason exists to construe telephone company's new service offering, a technologically improved PBX system, as essentially different from a rate change application, wherein the Public Service Commission approval is statutorily required. *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 378 A.2d 1085 (1977).

Affiliation of utility and supplier affects Commission's scrutiny of expenditures. — When material and services are purchased by a utility on the open market, the Commission usually accepts the contract price without further inquiry, but when the utility and the supplier are affiliated close scrutiny of the price

is usually required. *Atlantic Tel. Co. v. Public Serv. Comm'n*, App. D.C., 390 A.2d 439 (1978).

Prudent investment theory of rate regulation. — The Commission, in reaching decision concerning reasonable rate of return for power company under the prudent investment theory of rate regulation, must make findings upon underlying issues of return necessary to service company's outstanding funded debt and its preferred stock, return necessary to attract investors in common stock, and return on funded debts, preferred stock, and common stock of other public utilities having a risk factor similar to that of the company, and upon issue whether local conditions, economic conditions generally, and risk factor have remained static since determination of rate of return in a previous proceeding involving the company. *Capital Transit Co. v. Public Utils. Comm'n*, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

Rate of return calculation must factor in impact of nonutility transactions. — When a regulatory commission calculates and approves an overall rate of return and consequent rate schedule for utility operations based on comparative stock prices, it must factor into its determination an analysis of the impact of nonutility transactions on the price of the company's stock, including specific findings and conclusions as to whether and why investors, ratepayers, or both have a claim to nonutility revenues, especially those derived from former utility property which appreciated while in the rate base. *Washington Pub. Interest Org. v. Public Serv. Comm'n*, App. D.C., 393 A.2d 71 (1978), cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979).

Approval of repagination of tariff not approval of tariff. — Approval of the repagination of a tariff by letter of acceptance under § 43-527 was not a substantive approval of the tariff. *Professional Answering Serv., Inc. v. C & P Tel. Co.*, App. D.C., 565 A.2d 55 (1989).

Specific finding that price cost compensatory not required. — The Commission did not have to make a specific finding that a price charged was "cost compensatory" where it found that it was sufficient to recover the utility's research and development costs within a reasonable period of time. *Atlantic Tel. Co. v. Public Serv. Comm'n*, App. D.C., 390 A.2d 439 (1978).

Refusal of examination of rate bases no abuse of discretion. — In a public utility rate proceeding, the Commission's refusal of a demand of intervening Price Administrator that thoroughgoing examination be made into rate base, rate of return, operating expenses, depreciation, and all other matters relative to establishment of fair return was not an abuse of discretion. *Washington Gas Light Co. v. Byrnes*, 137 F.2d 547 (D.C. Cir. 1943), aff'd sub nom.

Vinson v. Washington Gas Light Co., 321 U.S. 489, 64 S. Ct. 731, 88 L. Ed. 883 (1944).

Lack of hearing on tariff provision. — This section did not invalidate the tariff provision, which was accepted by the Commission without notice, hearing, and investigation, and which limited liability of telephone company for omissions in telephone directory listings. *Bird v. C & P Tel. Co.*, App. D.C., 185 A.2d 917 (1962).

Organization of answering services has standing to challenge rate-making decision. — An organization of telephone answering services doing business in the District, composed of rate-paying customers of the telephone company, has standing to maintain an appeal challenging Commission's rate-making decision. *District of Columbia Tel. Answering Serv. Comm. v. Public Serv. Comm'n*, App. D.C., 476 A.2d 1113 (1984).

Effect of certain federal laws on Commission. — The Emergency Price Control Act

of 1942 and the Inflation Control Act of 1942 did not limit powers conferred by law on regulatory commissions over utility rates nor prohibit such commissions from permitting any increase in utility rates which were not shown to be necessary to prevent actual hardship, nor endow a different federal agency with new and superior rights and powers over utility rates. *Vinson v. Washington Gas Light Co.*, 321 U.S. 489, 64 S. Ct. 731, 88 L. Ed. 883 (1944).

Court of Appeals affirmed Commission's rate-making decisions. See *District of Columbia Tel. Answering Serv. Comm. v. Public Serv. Comm'n*, App. D.C., 476 A.2d 1113 (1984).

Cited in *District of Columbia v. Potomac Elec. Power Co.*, App. D.C., 402 A.2d 430 (1979); *Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n*, App. D.C., 432 A.2d 343 (1981); *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 450 A.2d 1187 (1982); *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 455 A.2d 384 (1982).

§ 43-602. Commission may adopt rules and regulations.

The Commission shall have power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits, and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 32; 1973 Ed., § 43-402.)

Cross references. — As to rules and regulations, see § 43-403.

Any procedure established by Commission must conform with minimum requirements of Administrative Procedure Act. *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 339 A.2d 710 (1975).

Intervention in rate proceedings. — The right conferred on the Price Administrator to intervene in a public utility rate proceeding does not include the power to compel the regulatory party to undertake a complete investigation against its better judgment or upon lines

contrary to governing statute. *Washington Gas Light Co. v. Byrnes*, 137 F.2d 547 (D.C. Cir. 1943), *aff'd sub nom. Vinson v. Washington Gas Light Co.*, 321 U.S. 489, 64 S. Ct. 731, 88 L. Ed. 883 (1944).

The intervention of the Director of Economic Stabilization and Administrator of Office of Price Administration in rate proceeding before the Commission was in subordination to Commission's standing rule that intervention should not change or enlarge the issues. *Vinson v. Washington Gas Light Co.*, 321 U.S. 489, 64 S. Ct. 731, 88 L. Ed. 883 (1944).

§ 43-603. Commission to keep informed of business conduct of utilities.

The Commission shall keep itself informed as to the manner and method in which the business of all public utilities is conducted, and shall have the right to obtain from any public utility all necessary information to enable the Commission to perform its duties. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 33; 1973 Ed., § 43-403.)

Cross references. — As to requirements for keeping and furnishing of records by utility companies, see §§ 43-509 to 43-519.

§ 43-604. Inspection of books and examination of officers of utilities.

The Commission or any commissioner or any person or persons employed by the Commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any public utility, and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs. Any person other than one of said commissioners who shall make such demand shall produce his authority to make such inspection or examination. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 34; 1973 Ed., § 43-404.)

Cross references. — As to examination of utility's books, see § 43-514.

§ 43-605. Production of records of utilities; attendance of witnesses; duties of United States Attorney and Corporation Counsel.

(a) The Commission may require, by order or subpoena, to be served upon any public utility in the same manner that a summons is served in a civil action in the Superior Court of the District of Columbia, the production within the District of Columbia at such time and place as it may designate of any books, accounts, papers, or records kept by such public utility in any office or place without the District of Columbia, or verified copies in lieu thereof, if the Commission shall so order, in order that an examination thereof may be made by the Commission under its direction. Any public utility failing or refusing to comply with any order or subpoena shall for each day it shall so fail or refuse forfeit and pay to the District of Columbia the sum of \$100, to be recovered in an action to be brought in the name of said District.

(b) Attendance of witnesses and the production of such documentary evidence may be required from any place in the United States. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission may invoke the aid of any court of the United States or the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section. And the said Commission is hereby given power to call on any United States Attorney, the Corporation Counsel of the District of Columbia or any counsel of the Commission to enforce the provisions of Chapters 1-10 of this title in the proper courts of the United States, and on such call it shall be the duty of the said United States Attorney, Corporation Counsel, or any counsel of the Commission, upon request of said Commission, to enforce the provisions of this section, the cost and expenses incurred to be paid out of the appropriations for the expenses of the courts of the United States. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 35; June 25, 1936, 49 Stat.

1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(39)(B); 1973 Ed., § 43-405.)

Cross references. — As to criminal penalties for violation of this section, see § 43-305.

As to requirements for keeping and furnishing of records by utility companies, see §§ 43-509 to 43-519.

As to authority of commissioners and agents to issue subpoenas, see § 43-619.

As to depositions, see § 43-621.

§ 43-606. Appointment of investigating agents; powers.

For the purpose of making any investigation with regard to any public utility the Commission shall have power to appoint, by an order in writing, an agent, whose duties shall be prescribed in such order. In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted in Chapters 1-10 of this title to the Commission and shall have power to administer oaths and take depositions. The Commission may conduct any number of such investigations contemporaneously through different agents, and may delegate to such agent or agents the taking of all testimony bearing upon any investigation or hearing. The decision of the Commission shall be based upon its examination of all testimony and records. The recommendations made by such agents shall be advisory only, and shall not preclude the taking of further testimony, if the Commission so order, nor further investigation. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 36; 1973 Ed., § 43-406.)

Cross references. — As to authority of commissioners and agents to issue subpoenas, see § 43-619.

Section references. — This section is referred to in § 43-619.

Cited in Office of People's Counsel v. Public Serv. Comm'n, App. D.C., 477 A.2d 1079 (1984).

§ 43-607. Utilities to furnish information required by Commission; maps, books, reports to be delivered on request.

Every public utility shall furnish to the Commission all information required by it to carry into effect the provisions of Chapters 1-10 of this title, and shall make specific answers to all specific questions submitted by the Commission. Any public utility receiving from the Commission any blanks with directions to fill the same shall cause the same to be properly filled out so as to answer, fully and correctly, each question therein propounded, and in case it is unable to answer any question it shall give a good and sufficient reason for such failure; and said answer shall be verified under oath by the president, secretary, superintendent, or general manager of such public utility, and returned to the Commission at its office within the period fixed by the Commission. Whenever required by the Commission, every public utility shall deliver to the Commission any or all maps, profiles, contracts, reports of engineers, and all documents, books, accounts, papers, and records, or copies of any or all of the same, with a complete inventory of all its property, in such form as the Commission

may direct. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 37; 1973 Ed., § 43-407.)

§ 43-608. Investigation of unjust discriminatory rates, schedules, or services; no order to be entered without formal hearing.

Upon its own initiative or upon reasonable complaint made against any public utility that any of the rates, tolls, charges, or schedules, or services, or time and conditions of payment, or any joint rate or rates, schedules, or services, are in any respect unreasonable or unjustly discriminatory, or that any time schedule, regulation, or act whatsoever affecting or relating to the conduct of any street railway or common carrier, or the production, transmission, delivery, or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telegraph or telephone message, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the Commission may, in its discretion, proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, or act complained of shall be entered by the Commission without a formal hearing. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 38; 1973 Ed., § 43-408.)

Cross references. — As to rate making, see § 43-601.

Rate case. — To qualify as a “rate case,” a proceeding must both set a rate and include a formal hearing. *Office of People’s Counsel v. Public Serv. Comm’n*, App. D.C., 572 A.2d 410 (1990).

Exhaustion of administrative remedies. — It is not contemplated that any resident of the District, feeling himself aggrieved, may rush into the courts without first submitting his case to the Commission, whose duty it is primarily to hear and adjust and, if possible, finally dispose of such complaints. *Hollis v. Kutz*, 265 F. 451 (D.C. Cir. 1920), *aff’d*, 255 U.S. 452, 41 S. Ct. 371, 65 L. Ed. 727 (1921).

Where a suit by a transit company against a carrier to obtain an injunction against certain competitive bus operations alleged to be illegal, presented both judicial and administrative questions, but an administrative action might be determinative of the entire controversy, the transit company would be required to exhaust its available administrative remedies before seeking injunctive relief. *Capital Transit Co. v. Safeway Trails, Inc.*, 201 F.2d 708 (D.C. Cir. 1953).

Hearing requirement. — In respect to a telephone company’s filings for new services, a formal hearing is required under this section only when the Public Service Commission pro-

ceeds upon its own initiative, or a reasonable complaint is made against the utility, on the basis that a rate, schedule or service appears unreasonable or unjustly discriminatory; however, when there is a typical new service filing by a telephone company to which no reasonable objection is made, and it is acceptable to the Commission, there is no requirement for a formal hearing before approval. *C & P Tel. Co. v. Public Serv. Comm’n*, App. D.C., 378 A.2d 1085 (1977).

Public opinion surveys. — In a proceeding by the Commission to determine whether installation and use of radio receivers in streetcars and busses were consistent with public convenience, comfort and safety, weight to be attached to public opinion surveys was a proper matter for determination by the Commission. *Public Utils. Comm’n v. Pollak*, 343 U.S. 451, 72 S. Ct. 813, 96 L. Ed. 1068 (1952).

Intervention does not include power to compel investigation. — The right conferred on the Price Administrator to intervene in a public utility rate proceeding does not include the power to compel the regulatory party to undertake a complete investigation against its better judgment or upon lines contrary to governing statute. *Washington Gas Light Co. v. Byrnes*, 137 F.2d 547 (D.C. Cir. 1943), *aff’d sub nom. Vinson v. Washington Gas Light Co.*, 321 U.S. 489, 64 S. Ct. 731, 88 L. Ed. 883 (1944).

Scope of review. — The court reviewing a Commission determination made under this section is expressly restricted to facts found by the Commission insofar as those findings did not appear to be unreasonable, arbitrary or capricious. *Public Utils. Comm'n v. Pollak*, 343 U.S. 451, 72 S. Ct. 813, 96 L. Ed. 1068 (1952).

Transit radio programs. — It was within the statutory authority of the Commission to prohibit or to permit and regulate the receipt and amplification of transit radio programs on

streetcars and busses under such conditions that total utility service would not be unsafe, uncomfortable or inconvenient. *Public Utils. Comm'n v. Pollak*, 343 U.S. 451, 72 S. Ct. 813, 96 L. Ed. 1068 (1952).

Cited in *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 455 A.2d 384 (1982); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 474 A.2d 835 (1984); *Professional Answering Serv., Inc. v. C & P Tel. Co.*, App. D.C., 565 A.2d 55 (1989).

§ 43-609. Public notice of rate applications or changes in conditions of service; opportunity for public response; notice to utility; setting time and place for hearing and investigation.

(a) Notice shall be given to the public by the utility in each rate payer's billing envelope of every rate application or change in condition of service proposed and filed with the Public Service Commission. The notice shall be sent in not later than the next billing period following the filing; no filing may be approved by the Commission without adequate time for rate payer response. Each notice shall be sufficiently accurate and detailed for the rate payer to understand the filing, including the rate payer's specified affected interest. The notice shall provide the specific rate or service change affecting the rate payer, including the proposed percentage and dollar increase for the rate and rider category of the customer. For every proceeding in which the Commission has a public hearing, the public shall be given a timely opportunity to present its views, as evidence of record, with at least 45 days notice, with notice widely and publicly distributed in a form sufficiently detailed and complete to permit the public to realize its specific and affected interest.

(b) The Commission shall, prior to the formal hearing, notify the public utility complained of that a complaint has been made, and 10 days after the notice has been given the Commission may proceed to set a time and place for a hearing and an investigation as hereinafter provided. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 39; 1973 Ed., § 43-409; Mar. 14, 1985, D.C. Law 5-153, § 3(d), 31 DCR 6440; July 17, 1985, D.C. Law 6-9, § 2(a), 32 DCR 2961.)

Legislative history of Law 5-153. — Law 5-153 was introduced in Council and assigned Bill No. 5-225, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on October 23, 1984, and November 7, 1984, respectively. Disapproved by the Mayor on November 30, 1984, the Bill was reenacted by the Council on December 4, 1984, assigned Act No. 5-217 and transmitted to both Houses of Congress for review.

Legislative history of Law 6-9. — Law 6-9 was introduced in Council and assigned Bill No. 6-178, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on April 16, 1985, and April 30, 1985, respectively. Signed by the Mayor on May 16, 1985, it was assigned Act No. 6-22 and transmitted to both Houses of Congress for its review.

Cited in *Professional Answering Serv., Inc. v. C & P Tel. Co.*, App. D.C., 565 A.2d 55 (1989).

§ 43-610. Notice as to hearings; compulsory attendance of witnesses.

The Commission shall give the public utility and the complainant, if any, 10 days notice of the time and place when and where such hearing and investigation will be held and such matters considered and determined. Both the public utility and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 40; 1973 Ed., § 43-410.)

Section references. — This section is referred to in §§ 43-611, 43-617 and 43-902.

Specificity of notice. — The failure of a notice of a Commission hearing to specifically state that the subject of initial deposits was being considered did not deny due process, in

light of the indication that the utility was aware that its deposit requirement was to be subject matter of hearing. *Washington Gas Light Co. v. Public Serv. Comm'n*, 334 F. Supp. 1062 (D.D.C. 1971).

§ 43-611. Reasonable rates to be ordered; notice to affected utility.

If upon such investigation the rates, tolls, charges, schedules, or joint rates shall be found to be unjust, unreasonable, insufficient, or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of Chapters 1-10 of this title, the Commission shall have power to determine and by order fix and order to be substituted therefor such rate or rates, tolls, charges, or schedules as shall be just and reasonable. If upon such investigation it shall be found that any regulation, time schedule, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of any of the provisions of this section, or if it be found that reasonable service is not supplied, the Commission shall have power to determine and substitute therefor such other regulations, time schedules, service, or acts and to make such orders respecting and such changes in such regulations, time schedules, service, or acts as shall be just and reasonable. And upon any investigation for the purpose of determining upon and requiring any reasonable extension or extensions of lines or of service that shall promise to be compensatory within a reasonable time, the Commission shall have power to fix, determine, and require every such extension or extensions to be made and the terms and conditions upon which the same shall be made; provided, that no hearing shall be had and no order shall be made respecting such extension or extensions, without notice to the public utility affected thereby, as provided in § 43-610. (Mar. 4, 1913, 37 Stat. 983, ch. 150, § 8, par. 41; 1973 Ed., § 43-411.)

Cross references. — As to rate making, see § 43-601.

Constitutional rights of private consumers are not invaded by rates established by Commission at a higher rate than is charged to government. *Hollis v. Kutz*, 255 U.S. 452, 41 S. Ct. 371, 65 L. Ed. 727 (1921).

Rate making is primarily legislative

process, and the Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or unreasonable, and the Commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas*

Light Co. v. Baker, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Standard for determining validity of rates. — Rates fixed by the Commission, to be valid, must enable a company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for risks assumed. *Washington Gas Light Co. v. Public Utils. Comm'n*, 55 F. Supp. 627 (D.D.C. 1944).

Commission's power to grant emergency rate relief derives from an implied rather than express statutory power and therefore the Commission should exercise its power to grant emergency relief with restraint. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 457 A.2d 776 (1983).

Commission findings must be based on evidence in record. — Whatever formula is adopted by the Commission for gas rate purposes, the Commission's findings must be based on substantial evidence in the record. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Contract fixing rate does not impair Commission's revision authority. — The fact that a rate is fixed by contract between a utility and its customer does not impair the Commission's authority to revise that rate when circumstances of public necessity so mandate. *Atlantic Tel. Co. v. Public Serv. Comm'n*, App. D.C., 390 A.2d 439 (1978).

Commission must consider impact of nonutility transactions in calculating rates of return. — When a regulatory commission calculates and approves an overall rate of return and consequent rate schedule for utility operations based on comparative stock prices, it must factor into its determination an analysis of the impact of nonutility transactions on the price of the company's stock, including specific findings and conclusions as to whether and why the investors, ratepayers, or both have a claim to nonutility revenues, especially those derived from former utility property which appreciated while in the rate base. *Washington Pub. Interest Org. v. Public Serv. Comm'n*, App. D.C., 393 A.2d 71 (1978), cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979).

Administrative Procedure Act applies to actions of the Commission. *Washington Pub. Interest Org. v. Public Serv. Comm'n*, App. D.C., 393 A.2d 71 (1978), cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979).

Criteria underlying rate order to be specified. — Whereas a Commission rate order cannot be set aside unless a petitioner makes a convincing showing that it is unreasonable, unjust or discriminatory, the same rate order cannot be approved by a reviewing

court without remand for clarification unless and until the Commission has complied with the Administrative Procedure Act by specifying its criteria for the order and clearly explaining how its findings rationally support that determination. *Washington Pub. Interest Org. v. Public Serv. Comm'n*, App. D.C., 393 A.2d 71 (1978), cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979).

Although the Court of Appeals will not set aside a rate order unless the party challenging it makes a "convincing showing" that it is unreasonable, unjust, or discriminatory, at the same time the court cannot approve a rate order unless the Commission has fully and clearly explained why it has entered the particular order under review. *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 498 A.2d 1167 (1985).

Determination of rates on system-wide basis. — Where a power company's rates in the District are arrived at by formulating schedules on a system-wide basis, extending into other jurisdictions, rates must be supported also by findings of similar conditions pertinent to rate-fixing where the other rates are similar or, where other rates are different, by findings of other relevant economic conditions which justify, on a rational basis, the District rates in relation to the other rates, and, if this cannot be done, it would seem necessary to resort to allocation. *Capital Transit Co. v. Public Utils. Comm'n*, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

Interstate utility treated as single enterprise for rate determination. — Where an electric power company supplied electric current from the same powerhouse to customers in the District of Columbia, Maryland and Virginia, the Commission, in determining whether rates for electric power should be increased, properly treated the business of the company as a single enterprise and refused to segregate properties or allocate costs attributable to the part of the business done in the District of Columbia. *Leeman v. Public Util. Comm'n*, 104 F. Supp. 553 (D.D.C. 1952), rev'd on other grounds sub nom. *Capital Transit Co. v. Public Util. Comm'n*, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

Rate change provided for under original service agreement. — Under a provision of an original service agreement that the furnishing of steam and chilled water would be subject to a regulation to extent lawfully prescribed by any local regulatory commission having jurisdiction, that if during term of agreement such public regulatory authority prescribed different rates such rates would supersede rates specified in agreement and that either purchaser or seller had right at any time to request regulatory authority to fix just and reasonable rates, the Public Service Commission had power to

change rates and to grant each party the right to seek rate changes. *Watergate Imp. Ass'n v. Public Serv. Comm'n*, App. D.C., 326 A.2d 778 (1974).

Commission may allow utility to use automatic fuel adjustment clause in its rate design. — Allowing utility to use automatic fuel adjustment clause in its rate design was not beyond the authority of the Public Service Commission, was not inconsistent with the policies of the Public Utilities Act or with the system of fixed rates, did not constitute retroactive ratemaking, and did not provide for dollar-for-dollar recovery of past fuel costs. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 472 A.2d 860 (1984).

Surcharge to recover past losses. — The general principle precluding a utility from charging higher rates in the future in order to recoup past losses does not preclude imposition of a surcharge to recover revenues lost by electric utility while rate order, which was found to be arbitrary and unreasonable, was in effect; the losses occurred after a fair rate of return had been determined and lost revenues were shown, by abundant evidence, to have been result of arbitrary and unreasonable rulings of the Public Service Commission; imposition of surcharge to recoup past losses does not constitute retroactive rate making. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 380 A.2d 126 (1977), rehearing en banc, App. D.C., 402 A.2d 14, cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 182 (1979).

Telephone company new service. — Absent a controlling statutory provision, no reason exists to construe a telephone company's new service offering, a technologically improved PBX system, as essentially different from a rate change application, wherein Public Service Commission approval is statutorily required. *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 378 A.2d 1085 (1977).

Motor lines company operating in District entitled to notice of hearing. — A

motor lines company which operated bus lines providing direct passenger service to downtown Washington, D. C., or by connecting carrier to any part of Washington, D. C., was entitled to such notice of hearing conducted by the Commission, relative to whether routes of another bus company operating in area should be extended, as would afford such motor lines reasonable opportunity to protect any of its interests which might be involved, and mere presence of employee of motor lines at such hearing did not meet requirement of reasonable notice, nor did posting of notice in District building. *Washington, Marlboro & Annapolis Motor Lines v. Public Utils. Comm'n*, 114 F. Supp. 321 (D.D.C. 1950), aff'd, 206 F.2d 490 (D.C. Cir. 1953).

Commission statement insufficient to support conclusion on rates. — The Commission's statement that return of less than 4 percent was inadequate to maintain a gas company in sound financial condition was insufficient to support Commission's conclusion that gas rates were reasonable, just and nondiscriminatory, where the Commission adopted prudent investment theory of rate regulation but did not subject issue of rate of return to inquiry at the hearing. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

Order prohibiting deposit until credit check made. — The Commission's order in effect prohibiting gas and electric utility from requiring initial deposits from residential customers until after credit check had been made is not arbitrary and capricious. *Washington Gas Light Co. v. Public Serv. Comm'n*, 334 F. Supp. 1062 (D.D.C. 1971).

Cited in *Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n*, App. D.C., 432 A.2d 343 (1981); *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 450 A.2d 1187 (1982); *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 455 A.2d 384 (1982).

§ 43-612. Expenses of investigation to be borne by utility; deposit for costs; limitation of expenditures in hearings; reimbursement fee.

(a)(1) There are established within the District of Columbia treasury 2 fiduciary funds to be known as the "Public Service Commission Agency Fund" and the "Office of the People's Counsel Agency Fund". These funds shall be accounted for under procedures established pursuant to subchapter V of Chapter 3 of Title 47, or any other applicable law. The Public Service Commission Agency Fund shall be used exclusively by the Commission for the payment of its expenses and the Office of the People's Counsel Agency Fund shall be used exclusively by the Office for the payment of its expenses arising from any investigation, valuation, revaluation, or proceeding of any nature by

the Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding or from any other order or action of the Commission. Expenses shall be deemed to include, but not be limited to, the cost of independent contractors, such as attorneys. Funding for both funds shall be provided through a special franchise tax which shall be paid by each public utility being investigated, valued, revalued, or otherwise affected through a proceeding of the Commission, subject to the limitations enumerated in paragraph (3) of this subsection. Any deposits made through this special franchise tax to each agency fund by any public utility may be amortized over whatever period the Commission shall deem proper and shall be allowed for in the rates to be charged by each utility.

(2) When any such investigation, valuation, revaluation, or other proceeding of any nature is begun by the Commission or the Office of the People's Counsel, either the Commission or the Office of the People's Counsel shall, according to rules issued pursuant to paragraph (5) of this subsection, determine from time to time the reasonable and necessary expenditures required to fully carry out their respective statutory responsibilities with regard to such investigation, valuation, revaluation, or other proceeding. Once the Commission has determined its requirements, the Commission may call upon the utility in question from time to time for the prompt deposit of the special franchise tax deposit to the Public Service Commission Agency Fund determined by the Commission to be reasonable and necessary, subject to the limitations provided in paragraph (3) of this subsection. Once the Office of the People's Counsel has determined its requirements, the Office shall submit its determination for review by the Commission. Based on the record established by the Office's determination of its requirement for special franchise tax funds, the Commission shall review the Office's determination solely to determine whether it is consistent with the statutory authority of and rules issued by the Office, whether it is supported by findings, whether those findings are sustained by substantial evidence in the record submitted to the Commission, and whether it is within the limitations enumerated in paragraph (3) of this subsection. The Commission shall complete its review within 10 days (excluding Saturdays, Sundays, and holidays) of receipt of the Office's determination. After completing its review, the Commission shall either call upon the utilities for the prompt deposit of the special franchise tax deposit to the Office of the People's Counsel Agency Fund or inform the Office in writing of any specific failures of the Office to meet the Commission's enumerated standard of review. Within 10 days (excluding Saturdays, Sundays, and holidays) of any resubmission by the Office, the Commission shall similarly act. If the Commission still notes a failure to meet its standard of review, the Office may appeal to the District of Columbia Court of Appeals under procedures enumerated in § 43-905. If the Commission fails to take action on any submission or resubmission by the Office within the required time frame, the submission or resubmission shall be deemed approved, and the Commission shall carry out its duty to obtain the requested deposit. All such sums shall be deposited in the District of Columbia Treasury. Those sums which are to be used by the

Commission for its expenses shall be deposited in the Public Service Commission Agency Fund and those sums which are requested by the Commission on behalf of the Office shall be deposited in the Office of the People's Counsel Agency Fund, to be disbursed in the manner provided for by law for other expenditures of the government of the District of Columbia. The balance of any sums deposited in each fund remaining after the final disposition of the proceeding or any litigation arising therefrom shall be returned to the utility which made the deposit and shall be credited to the account of the utility from which the deposit was made.

(3) In any valuation or rate case, neither the Commission nor the Office may individually seek special franchise tax deposits of more than one-quarter of one percent of the jurisdictional valuation of the company which is the subject of the proceeding. In all other investigations docketed as formal proceedings by the Commission, neither the Commission nor the Office shall individually seek special franchise tax deposits in any one year of more than one-twentieth of one percent of the jurisdictional valuation of each public utility which is the subject of one or more investigations during that year. For the purposes of this paragraph, the Commission may determine the jurisdictional valuation of the public utility which is the subject of the formal proceeding whenever it deems necessary, in accordance with § 43-506, based on the operations of the utility over whatever 12-month period it deems appropriate.

(4) Should any public utility fail to make any special franchise tax deposit ordered by the Commission pursuant to this section, the Commission shall certify this failure to the Mayor for collection pursuant to the provisions of subchapter XIII of Chapter 18 of Title 47.

(5) The Commission and the Office shall issue rules reasonable and necessary to provide procedures for the determination of their needs for funds from their respective agency funds. These rules shall include provisions for full disclosure of all special franchise tax deposits prior to the issuance of the deposit orders by the Commission on its own behalf and on behalf of the Office. Full disclosure shall include, but not be limited to, the name of each contractor to be hired, the qualifications of each contractor, a brief description of the work to be done by each contractor, the number of persons employed by each contractor and the hourly rate to be charged by each person thus employed, and the estimated value of each contract.

(6) The District of Columbia Auditor shall review the amounts deposited and disbursed by the Commission and the Office under this section and shall issue a report to the Mayor and the Council on each agency fund on a biennial basis.

(7) The Commission and the Office shall issue reports to the Mayor and the Council by January 1 of the succeeding fiscal year on deposits to and disbursements from their respective agency funds during each fiscal year. The reports shall include, but not be limited to, the following information:

- (A) The dollar amount of each deposit;
- (B) The total amount disbursed for each proceeding;

(C) The name of each contractor hired, the expertise of each contractor, the type of work performed by each contractor, the hourly rate of each contractor, and the total amount received by each contractor, by proceeding;

(D) The amount reimbursed to the utility companies, by proceeding; and

(E) The dollar amount of contracts awarded to minority and District-based firms.

(8) Neither the staff of the Commission nor any consultant hired by the Commission shall appear as a party to, advocate, or intervenor in any Commission proceeding. Individual staff members and consultants may appear on behalf of the Commission as expert witnesses at the direction of the Commission to present testimony on selected issues after the Commission makes a finding of the issues to be decided in the proceeding and a determination that testimony in addition to that to be presented by the parties or intervenors is required by the Commission to develop a complete record. The staff members and consultants shall not advocate a position on the merits. Expert witnesses may be represented by counsel appointed by the Commission for this purpose. The General Counsel or the General Counsel's designee may, at the direction of the Commission and on behalf of the Commission, cross-examine any witness in any proceeding before the Commission.

(9)(A) Each public utility shall furnish the Commission a statement of all costs of participation to be incurred in each Commission and related court proceeding or in complying with the provisions of this title. The statement shall include, but is not limited to, the projected costs and expenses both direct and indirect, an allocation of all projected internal overhead, expenses, and salaries, the name of each contractor to be hired and the value of each contract. This statement shall be compiled and filed with the Commission, with a copy to the Office of People's Counsel, when filing a request for a change in rates or services with the Commission. Each public utility shall also file annually with the Commission, with a copy to the Office, a statement of costs for the previous fiscal year no later than 3 months after the completion of the fiscal year.

(B) The records to be kept and the information presented in the annual statement shall be by case, matter, investigation, or proceeding and shall describe all costs and expenses, external and internal, retained and employed, direct and indirect, including an allocation of all internal overhead, expenses, and employee salaries to each proceeding or matter. If an allocation of costs is made, the report shall fully explain the allocation method used. If any services were provided to the public utility by consultants or contractors, copies of the relevant contracts shall be provided with the annual statement. The Office of the People's Counsel may submit to the public utility a request for further information concerning the annual statement.

(b)(1) All amounts appropriated for the Public Service Commission and the Office of People's Counsel for each fiscal year, except for amounts appropriated for carrying out the Commission's duties under Chapter 26 of Title 2, shall be repaid during such fiscal year by the public utilities and telecommunications services providers as a reimbursement fee.

(2) The amount of the reimbursement fee to be paid by each local exchange carrier, that is not the incumbent local exchange carrier as defined in

this chapter, authorized to provide service in the District, and the formula through which such an amount shall be annually established, shall be determined by the Public Service Commission.

(3) The amount of the reimbursement fee to be paid by each public utility other than a local exchange carrier subject to paragraph (2) of this subsection shall be equal to the product of the amounts appropriated, less the amount to be reimbursed by the providers subject to paragraph (2) of this subsection, multiplied by the fraction, as determined by the Mayor, represented by the revenues of such public utility derived from utility operations in the District of Columbia that are regulated by the Public Service Commission during the immediately preceding fiscal year (or other 12-month period as the Mayor may designate), divided by the gross revenues of all public utilities from utility operations in the District of Columbia during such period. The fee shall be paid by the public utilities during such fiscal year to the Treasurer of the District of Columbia, at such time or times and in such manner as the Mayor by regulation may require. If the total amount paid or obligated by the Public Service Commission and the People's Counsel during such fiscal year pursuant to appropriations for such fiscal year is less than the amounts appropriated by more than 5%, the Mayor shall refund to each public utility or credit each public utility with such part of the difference, rounded to the nearest dollar, as equals the product of such difference multiplied by the fraction, as set forth above, representing the gross revenue of such public utility relative to the gross revenues of all public utilities.

(4) Notwithstanding the requirements of paragraph (2) of this subsection, in the case of a local exchange carrier that is not the incumbent local exchange carrier, the amount of the fee payable in the first year such service is provided shall be no less than \$25,000.

(5) The funding provisions of subsection (a) of this section shall not apply to local exchange carriers that are not the incumbent local exchange carrier; except, that such providers may be assessed for a proportionate share of the costs of the proceeding required under § 43-1452(k), up to a maximum amount of \$25,000 each. Any such amount shall be credited against the reimbursement fee of any such LEC pursuant to paragraph (2) of this subsection, in subsequent years.

(6) Any local exchange carrier, other than the incumbent local exchange carrier, that seeks certification by the Commission within 5 years of September 9, 1996 shall be assessed in an amount equal to the amount assessed pursuant to paragraph (5) of this subsection, and that assessment shall be reimbursed by the Commission, in equal amounts to the incumbent local exchange carrier, and each local exchange carrier whose authorization from the Commission to provide local exchange service was received during the period in which the proceeding required under § 43-1452(k) took place.

(7)(A) For any proceeding required to arbitrate disputes between carriers pursuant to the procedures established in this chapter, the Commission may assess, on a nondiscriminatory basis, each local exchange carrier who is a participant in any dispute, an amount equal to the actual cost to the Commission of conducting the arbitration, and the Commission shall present

to the Council along with its annual budget request, an accounting of the expenditures of the PSC for each proceeding.

(B) For any proceeding, other than the proceeding called for in § 43-1452(k) and the proceedings referenced in subparagraph (A) of this paragraph, which the Commission may determine is necessary to carry out the purposes of this chapter, the Commission and, when appropriate to its mission, the Office of the People's Counsel, may assess, on a nondiscriminatory basis, the parties who are participants in the proceeding in an amount equal to the actual costs of the proceeding, and the Commission and the Office of the People's Counsel shall present to the Council along with each agency's annual budget request, an accounting of the expenditures of each agency for each proceeding.

(8) Five dollars of the license tax paid for each passenger vehicle for hire by common carriers under § 47-2829(d), shall be deemed the reimbursement fee payable by such common carriers under this subsection.

(9) The Mayor, pursuant to subchapter I of Chapter 15 of Title 1, may issue regulations to carry out this subsection, and may delegate all or any of the authority vested in the Mayor by this subsection to such agency or agencies, including the Public Service Commission and the Office of the People's Counsel, as the Mayor may deem appropriate. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 42; Mar. 3, 1927, 44 Stat. 1351, ch. 304; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 3; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; 1973 Ed., § 43-412; Jan. 2, 1975, 88 Stat. 1976, Pub. L. 93-614, § 2; June 15, 1976, D.C. Law 1-70, title VI, § 606, 23 DCR 553; Sept. 13, 1980, D.C. Law 3-88, § 2, 27 DCR 3004; Aug. 10, 1984, D.C. Law 5-104, §§ 2, 3(b), 31 DCR 3037; Mar. 14, 1985, D.C. Law 5-153, § 3(e), 31 DCR 6440; July 17, 1985, D.C. Law 6-9, § 2(b), 32 DCR 2961; Aug. 1, 1996, D.C. Law 11-152, § 403, 43 DCR 2978; Sept. 9, 1996, D.C. Law 11-154, § 9, 43 DCR 3736.)

Cross references. — As to appointment, compensation, qualifications, etc., of People's Counsel, see § 43-406.

As to appropriations for Office of People's Counsel, see § 43-407.

As to investigation and valuations, see §§ 43-505 to 43-508.

As to rate making, see § 43-601.

As to organization of fund structures, see § 47-373.

Section references. — This section is referred to in §§ 40-1720, 43-406, 43-407, 43-613, 43-910, 47-1317, and 43-1458.

Effect of amendments. — D.C. Law 11-152, in (a)(6), deleted "for the previous fiscal year" following "this section" and substituted "on a biennial basis" for "by January 1 of the succeeding fiscal year."

D.C. Law 11-154 rewrote (b).

Emergency act amendments. — For temporary amendment of section, see § 403 of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 303 of the Fiscal Year 1996 Budget Support Congressional Review Emer-

gency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Section 501 of D.C. Act 11-335 provides for the application of the act.

Legislative history of Law 1-70. — Law 1-70 was introduced in Council and assigned Bill No. 1-229, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings and reconsiderations of final reading on February 20, 1976, March 11, 1976 and April 6, 1976, respectively. Signed by the Mayor on April 20, 1976, it was assigned Act No. 1-106 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-88. — Law 3-88 was introduced in Council and assigned Bill No. 3-274, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 3, 1980 and June 17, 1980, respectively. Signed by the Mayor on July 2, 1980, it was assigned Act No. 3-206 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-104. — Law 5-104 was introduced in Council and assigned Bill No. 5-411. The Bill was adopted on first and

second readings on April 30, 1984, and May 15, 1984, respectively. Signed by the Mayor on June 6, 1984, it was assigned Act No. 5-145 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-153. — See note to § 43-306.

Legislative history of Law 6-9. — See note to § 43-609.

Legislative history of Law 11-152. — Law 11-152, the “Fiscal Year 1996 Budget Support Act of 1996,” was introduced in Council and assigned Bill No. 11-655, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 2, 1996, and May 7, 1996, respectively. Signed by the Mayor on May 28, 1996, it was assigned Act No. 11-279 and transmitted to both Houses of Congress for its review. D. C. Law 11-152 became effective on August 1, 1996.

Legislative history of Law 11-154. — Law 11-154, the “Telecommunications Competition Act of 1996,” was introduced in Council and assigned Bill No. 11-258, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 21, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 25, 1996, it was assigned Act No. 11-300 and transmitted to Congress for its review. D.C. Law 11-154 became effective September 9, 1996.

Constitutionality. — There are significant procedural safeguards in D.C. Law 5-153. First, the statute demands that the Office of the People’s Counsel issue rules reasonable and necessary to provide procedures for the determination of their needs for funds. Second, the statute demands that the established procedural rules make the OPC, before requesting funds, disclose the name of each contractor to be hired, the qualifications of each contractor, a brief description of the work to be done by each contractor, the number of persons employed by each contractor and the hourly rate to be charged by each person thus employed, and the estimated value of each contract. Third, the act mandates that only the Commission has the authority to issue an order directing a utility to make deposits to the fund supporting the OPC. Finally, the statute demands that the PSC review OPC assessment requests before calling upon utilities to make a deposit of funds. Thus the Commission maintains a vast and constitutionally significant amount of oversight. *Potomac Elec. Power Co. v. District of Columbia Gov’t*, 651 F. Supp. 907 (D.D.C. 1986).

Purpose. — While the general purpose of this section is to require regulated utilities to bear the “reasonable and necessary” costs incurred by the Commission and Office of the People’s Counsel a more specific purpose of subsection (a)(3) is to set limitations on those

costs. The section sets a considerably higher ceiling on OPC’s reimbursable expenditures for rate cases than for all other investigations. *Office of People’s Counsel v. Public Serv. Comm’n*, App. D.C., 572 A.2d 410 (1990).

Proceeding qualifying as a “rate case.” — To qualify as a “rate case,” a proceeding must both set a rate and include a formal hearing. *Office of People’s Counsel v. Public Serv. Comm’n*, App. D.C., 572 A.2d 410 (1990).

“Rate case” refers to general and specific rate cases, those proceedings in which all or some of the rates of a utility are set. *Washington Gas Light Co. v. Public Serv. Comm’n*, App. D.C., 455 A.2d 384 (1982).

“Rate case” does not encompass adjudicatory or rulemaking proceedings dealing with ratemaking methodology or other proceedings which have some nexus to the setting of utility rates. *Washington Gas Light Co. v. Public Serv. Comm’n*, App. D.C., 455 A.2d 384 (1982).

Tariff filings. — In light of the relative simplicity of most tariff filings, the Commission concluded that, absent unusual circumstances, there is no need in a routine tariff filing for a formal hearing. The presence or absence of a formal hearing, and the discovery and preparation associated with such a hearing, determines whether OPC’s expenses will be large or small, and it makes sense that the decision to hold a hearing should determine whether a proceeding setting rates is subject to the higher or the lower statutory limitation on expenses, and the Commission’s decision to classify telephone tariff proceedings as “all other investigations,” thereby subjecting them to the lower limitation on expenses, enhanced the purposes underlying this section. *Office of People’s Counsel v. Public Serv. Comm’n*, App. D.C., 572 A.2d 410 (1990).

“Valuation” refers to jurisdictional, not system-wide, valuation. — A jurisdictional valuation encompasses property located outside District boundaries which serves District of Columbia customers. *Washington Gas Light Co. v. Public Serv. Comm’n*, App. D.C., 455 A.2d 384 (1982).

Duty of Commission to assess reasonableness of People’s Counsel’s requests. — This section imposes upon the Public Service Commission the authority and duty to assess the reasonableness of Office of People’s Counsel’s requests before ordering expense deposits. *Potomac Elec. Power Co. v. Public Serv. Comm’n*, App. D.C., 455 A.2d 374 (1982).

Factors determining whether expenses are assessable for reimbursement. — This section includes no express limits on the kinds of items that are reimbursable. What is required for expenses to be assessed are: (1) That these expenses are not already covered by appropriations, and (2) that these expenses are episodic, rather than ongoing. The expenses

must be associated with a particular proceeding or investigation. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 455 A.2d 374 (1982).

Assessability of expenses incurred under sole direction of People's Counsel. — Expenses which were incurred under the sole direction of the Office of People's Counsel, if otherwise reasonable, are properly assessable.

Potomac Elec. Power Co. v. Public Serv. Comm'n, App. D.C., 455 A.2d 374 (1982).

Cited in *Washington Ry. & Elec. Co. v. District of Columbia*, 77 F.2d 366 (D.C. Cir. 1935); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 414 A.2d 516 (1980); *Watergate E., Inc. v. District of Columbia Public Serv. Comm'n*, App. D.C., 662 A.2d 881 (1995).

§ 43-613. Application of amendment to § 43-612.

The provisions of § 43-612(b) shall apply with respect to such portion, if any, of fiscal year 1980 beginning on September 13, 1980, and ending on September 30, 1980, and with respect to each fiscal year thereafter. (Sept. 13, 1980, D.C. Law 3-88, § 3, 27 DCR 3004.)

Legislative history of Law 3-88. — See note to § 43-612.

§ 43-614. Separate hearings on complaints; complaints not to be dismissed because of absence of direct damage.

The Commission may, in its discretion, when complaint is made of more than one rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall of necessity at any time be dismissed because of the absence of direct damage to the complainant. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 43; 1973 Ed., § 43-413.)

Cited in *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 455 A.2d 384 (1982).

§ 43-615. Summary investigation.

Whenever the Commission shall believe that any rate or charge may be unreasonable or unjustly discriminatory, or that any reasonable service is not supplied, or that an investigation of any matter relating to any public utility should for any reason be made, it may, on its own motion, summarily investigate the same with or without notice. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 44; 1973 Ed., § 43-414.)

Cited in *Capital Transit Co. v. Safeway Trails, Inc.*, 201 F.2d 708 (D.C. Cir. 1953).

§ 43-616. Hearings after summary investigation.

If after making such investigation the Commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters so investigated, it shall furnish such public utility interested a statement notifying the public utility of the matters under investigation. Ten

days after such notice has been given the Commission may proceed to set a time and place for a hearing and an investigation as hereinbefore provided. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 45; 1973 Ed., § 43-415.)

Cited in Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n, App. D.C., 432 A.2d 343 (1981).

§ 43-617. Notice; hearing to be conducted as though complaint had been filed.

Notice of the time and place for such hearing shall be given to the public utility and to such other interested persons as the Commission shall deem necessary, as provided in § 43-610, and thereafter proceedings shall be had and conducted in reference to the matter investigated in like manner as though complaint had been filed with the Commission relative to the matter investigated, and the same order or orders may be made in reference thereto as if such investigation had been made on complaint. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 46; 1973 Ed., § 43-416.)

Cited in Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n, App. D.C., 432 A.2d 343 (1981).

§ 43-618. Utility may make complaint.

Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by the Commission or upon reasonable complaint as hereinbefore provided. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 47; 1973 Ed., § 43-417.)

Cited in Capital Transit Co. v. Safeway Trails, Inc., 201 F.2d 708 (D.C. Cir. 1953).

§ 43-619. Commissioners and agents may administer oaths, issue subpoenas; proceeding to punish for contempt.

Each of the commissioners and every agent provided for in § 43-606, for the purposes mentioned in Chapters 1-10 of this title, shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony. In case of disobedience on the part of any person or persons to comply with any order of the Commission or any commissioner, or any subpoena, or on the refusal of any witness to testify to any matter regarding which he may be interrogated before the Commission or its agent authorized, it shall be the duty of the Superior Court of the District of Columbia, or a judge thereof, on application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to

testify therein. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 48; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(39)(C); 1973 Ed., § 43-418.)

§ 43-620. Witness fees.

Each witness who shall appear before the Commission or its agent by its order shall receive for his attendance the fees and mileage provided for witnesses in the United States District Court for the District of Columbia on March 4, 1913, which shall be audited and paid in the same manner as fees in criminal cases within the District of Columbia are audited and paid, upon the presentation of proper vouchers, sworn to by such witnesses and approved by the chairman of the Commission. No witnesses subpoenaed at the instance of parties other than the Commission shall be entitled to compensation for attendance or travel unless the Commission shall certify that his testimony was material to the matter investigated, and that his attendance as a witness was reasonably necessary. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 49; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; 1973 Ed., § 43-419.)

§ 43-621. Testimony may be taken by deposition.

The Commission or any party may, in any investigation, cause the depositions of witnesses residing within or without the District of Columbia to be taken in the manner prescribed by law for like depositions in civil actions in the Superior Court of the District of Columbia. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 50; July 29, 1970, 84 Stat. 583, Pub. L. 91-358, title I, § 163(i)(1); 1973 Ed., § 43-420.)

§ 43-622. Record of proceedings to be kept; testimony to be taken stenographically.

A full and complete record shall be kept of all proceedings had before the Commission or its agents on any formal investigation had, and all testimony shall be taken down by a stenographer appointed by the Commission. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 51; 1973 Ed., § 43-421.)

Cited in Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n, App. D.C., 432 A.2d 343 (1981).

§ 43-623. Certified copy of transcript to be received in evidence; copy to be furnished without cost.

A transcribed copy of the evidence and proceedings, or any specific part thereof, in any investigation taken by a stenographer appointed by the Commission, being certified by such stenographer to be a true and correct transcript of all the testimony in the investigation or of a particular witness, or

of other specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had in such investigation so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the fact so certified. A copy of such transcript shall be furnished on demand, free of cost, to any party to such investigation. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 53; 1973 Ed., § 43-422.)

Cited in Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n, App. D.C., 432 A.2d 343 (1981).

CHAPTER 7. ISSUANCE OF SECURITIES.

Sec.	Sec.
43-701. Creation of liens on property of utilities; supervision by Commission.	zation or consolidation; approval of consolidation by Commission.
43-702. Certificate showing authority to issue stock or pay dividends to be obtained.	43-705. Application of proceeds of stock.
43-703. Stocks not to be issued until certificate is recorded.	43-706. Stock to be void unless law is complied with.
43-704. Issue of stocks for purpose of reorgani-	43-707. Penalty for improper issuance or application of stock or proceeds.

§ 43-701. Creation of liens on property of utilities; supervision by Commission.

The power to create liens on corporate property by public utilities in the District of Columbia is hereby declared to be a special privilege, the right of supervision, regulation, restriction, and control of which is hereby vested in the Public Service Commission of the District of Columbia, and such power shall be exercised according to the provisions of Chapters 1-10 of this title. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 72; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; 1973 Ed., § 43-801.)

Cross references. — As to construction of Chapters 1 to 10 of this title, see § 43-103. As to saving clauses, see §§ 43-105 and 43-106.

§ 43-702. Certificate showing authority to issue stock or pay dividends to be obtained.

No public utility shall hereafter issue any stocks, stock certificates, bonds, mortgages, or any other evidences of indebtedness payable in more than 1 year from date, or pay any stock, bond or scrip dividend, until it shall have first obtained the certificate of the Commission showing authority for such issue from the Commission. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 73; Aug. 4, 1955, 69 Stat. 485, ch. 545, § 2; 1973 Ed., § 43-802.)

Cross references. — As to criminal penalties for violation of this section, see § 43-301.

§ 43-703. Stocks not to be issued until certificate is recorded.

No public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness for money, property, or services, either directly or indirectly, nor shall it receive any money, property, or services in payment of the same, either directly or indirectly, until there shall have been recorded upon the books of such public utility the certificate of the Commission in Chapters 1-10 of this title provided for. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 74; 1973 Ed., § 43-803.)

Cross references. — As to criminal penalties for violation of this section, see § 43-301.

§ 43-704. Issue of stocks for purpose of reorganization or consolidation; approval of consolidation by Commission.

No public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness secured on its property in the District of Columbia for the purpose of any reorganization or consolidation in excess of the total amount of the stocks, certificates of stock, bonds, or other evidences of indebtedness then outstanding against the public utilities so reorganizing or consolidating, and no such public utility shall purchase the property of any other public utility for the purpose of effecting a consolidation until the Commission shall have determined and set forth in writing that said consolidation will be in the public interest, nor until the Commission shall have approved in writing the terms upon which said consolidation shall be made. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 76; 1973 Ed., § 43-805.)

Cross references. — As to sale and merger of utilities, see Chapter 8 of this title.

§ 43-705. Application of proceeds of stock.

No public utility shall apply the proceeds of any such stock, certificates of stock, bonds, or other evidences of indebtedness to any other purpose or issue the same on any less favorable terms than that specified in the certificate issued by the Commission. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 77; 1973 Ed., § 43-806.)

Cited in Washington Pub. Interest Org. v. Public Serv. Comm'n, App. D.C., 446 A.2d 28 (1982).

§ 43-706. Stock to be void unless law is complied with.

All stocks, certificates of stock, bonds, and other evidences of indebtedness issued contrary to the provisions of Chapters 1-10 of this title shall be void. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 78; 1973 Ed., § 43-807.)

§ 43-707. Penalty for improper issuance or application of stock or proceeds.

Any public utility, or any agent, director, or officer thereof, who shall, directly or indirectly, issue or cause to be issued any stocks, certificates of stock, bonds, or other evidences of indebtedness contrary to the provisions of Chapters 1-10 of this title, or who shall apply the proceeds from the sale thereof to any purposes other than that specified in the certificate of the Commission, shall forfeit and pay into the Treasury of the United States, to the credit of the General Fund of the District of Columbia, not less than \$1,000 nor more than \$10,000 for each offense. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 79; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; 1973 Ed., § 43-808.)

Cross references. — As to other criminal penalties, see § 43-301.

As to disposition of fines, forfeitures, and penalties, see § 43-312.

As to prosecutions under other laws, see § 43-313.

CHAPTER 8. SALE AND MERGER OF UTILITIES.

Sec.
43-801. Assignment of franchise; acquisition of
stocks and bonds of competing
utilities.

Sec.
43-802. [Repealed].
43-803. Merger of street railways permitted.

§ 43-801. Assignment of franchise; acquisition of stocks and bonds of competing utilities.

No franchise nor any right to or under any franchise to own or operate any public utility as defined in Chapters 1-10 of this title or to use the tracks of any street railroad shall be assigned, transferred, or leased, nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer, lease, contract, or agreement shall have been approved by the Commission in writing. The permission and approval of the Commission to the assignment, transfer, or lease of a franchise under this section shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture. It shall be unlawful for any street railroad corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, or other public utility corporation, directly or indirectly, to acquire the stock or bonds of any other corporation incorporated for or engaged in the same or similar business as it is, unless authorized in writing to do so by the Commission, and every contract, transfer, agreement for transfer or assignment of any such stock or bonds without such written authority shall be void and of no effect. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 54; 1973 Ed., § 43-501.)

Cross references. — As to liberal construction of Chapters 1 to 10 of this title, see § 43-103.

As to saving clauses, see §§ 43-105 and 43-106.

As to criminal penalties, see §§ 43-306 to 43-308.

As to reorganization or consolidation of companies, issuance of stock, see § 43-704.

Cited in *Washington Gas Light Co. v. Dann*, 70 F.2d 746 (D.C. Cir.), cert. denied, 292 U.S. 649, 54 S. Ct. 859, 78 L. Ed. 1499 (1934).

§ 43-802. Antimerger law.

Repealed. Aug. 5, 1997, 111 Stat. 781, Pub. L. 105-33, § 11703.

§ 43-803. Merger of street railways permitted.

Any or all of the street railway companies operating in the District of Columbia are hereby authorized and empowered to merge or consolidate, either by purchase or lease by one company of the properties, and/or stocks or securities of any of the others, or by the formation of a new corporation to acquire the properties and/or stocks or securities and to succeed to the powers and obligations of each or any of said companies under such terms and conditions as may be agreed upon by a vote of a majority in amount of the stock

of the respective corporations and as may be approved by the Public Service Commission of the District of Columbia; provided, that no merger of said companies shall be finally consummated until the same is approved by a joint resolution of Congress. Such new corporation shall be incorporated under the provisions of Chapter 2 of Title 29 of this code, as far as applicable, with issues of stock at a stated par value and/or of no par value, as may be approved by the Public Service Commission. Congress reserves the right to alter, amend, or repeal this section or any provision thereof. (Mar. 4, 1925, 43 Stat. 1265, ch. 527, §§ 1, 3; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; 1973 Ed., § 43-503.)

Cross references. — As to issuance of stock upon reorganization or consolidation, see § 43-704.

As to restrictions upon competing lines, see § 44-201.

Section references. — This section is referred to in § 43-802.

CHAPTER 9. ORDERS AND COURT PROCEEDINGS.

- | | |
|---|---|
| <p>Sec.
43-901. Schedules to conform to orders of Commission; schedule of changes to be approved by Commission.
43-902. Commission may rescind, alter, or amend orders fixing rates.
43-903. Rates to be in force and to be prima facie reasonable.
43-904. Application to Court of Appeals for instructions; application for reconsideration.
43-905. Appeal to Court of Appeals from certain orders; statement to accompany decision; Commission not liable for costs or damages.</p> | <p>Sec.
43-906. Appeal limited to questions of law.
43-907. Orders to remain in force pending appeal; suspension of order.
43-908. Authority of Commission to rescind its order after appeal is filed.
43-909. Method of review exclusive.
43-910. Severability.
43-911. Production of incriminating evidence compellable; immunity from prosecution.
43-912. Commission to furnish certified copies of orders.</p> |
|---|---|

§ 43-901. Schedules to conform to orders of Commission; schedule of changes to be approved by Commission.

All public utilities to which an order of the Commission applies shall make such changes in their schedules on file as may be necessary to make the same conform to said order, and no change shall thereafter be made by any public utility in any such rates, tolls, or charges, or in any joint rate or rates, without the approval of the Commission. Certified copies of all other orders of the Commission shall be delivered to the public utility affected thereby in like manner, and the same shall take effect within such reasonable time thereafter as the Commission shall prescribe. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 61; 1973 Ed., § 43-701.)

Cross references. — As to liberal construction of Chapters 1 to 10 of this title, see § 43-103.

As to saving clauses, see §§ 43-105 and 43-106.

As to penal provisions, see §§ 43-306 to 43-308.

As to changes of rates and schedules, see §§ 43-523 to 43-528.

As to rates and rate making, see § 43-601.

As to evidentiary effect of certified copies, see § 43-912.

Scope of section. — This section does not envision an adjudication of the rights of parties but, rather, outlines a technical procedure between the Commission and the affected utility. *People's Counsel v. Public Serv. Comm'n, App. D.C., 462 A.2d 1105 (1983).*

New service offering not essentially different from rate change application. — Absent a controlling statutory provision, no reason exists to construe the telephone compa-

ny's new service offering, a technologically improved PBX system, as essentially different from a rate change application, wherein Commission approval is statutorily required. *C & P Tel. Co. v. Public Serv. Comm'n, App. D.C., 378 A.2d 1085 (1977).*

Revised schedules need not be subjected to adjudicatory procedure after a final ratemaking order based on substantial evidence has set out specifically how rates and rate design will be changed. *People's Counsel v. Public Serv. Comm'n, App. D.C., 462 A.2d 1105 (1983).*

Public Service Commission ratemaking policy decision was ripe for review where the pertinent facts were not in dispute, where the Court of Appeals was being asked to resolve strictly legal questions, and where the rule established by the Commission was a "final order." *Washington Gas Light Co. v. Public Serv. Comm'n, App. D.C., 508 A.2d 930 (1986).*

§ 43-902. Commission may rescind, alter, or amend orders fixing rates.

The Commission may, at any time, upon notice to the public utility and after opportunity to be heard as provided in § 43-610, rescind, alter, or amend any order fixing any rate or rates, tolls, charges, or schedules, or any other order made by the Commission, and certified copies of the same shall be served and take effect as herein provided for original orders. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 62; 1973 Ed., § 43-702.)

Cross references. — As to rescission of order pending appeal, see § 43-908.

As to power of Commission to alter unreasonable or discriminatory rates, see § 43-311.

Cited in Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n, App. D.C., 432 A.2d 343 (1981); Office of People's Counsel v. Public Serv. Comm'n, App. D.C., 571 A.2d 206 (1990).

§ 43-903. Rates to be in force and to be prima facie reasonable.

All rates, tolls, charges, time and condition of payment thereof, schedules, and joint rates fixed by the Commission shall be in force and shall be prima facie reasonable until finally found otherwise in an action brought for that purpose. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 63; 1973 Ed., § 43-703.)

Cited in People's Counsel v. Public Serv. Comm'n, App. D.C., 472 A.2d 860 (1984).

§ 43-904. Application to Court of Appeals for instructions; application for reconsideration.

(a) If at any time the Commission shall be in doubt of the elements of value to be by them considered in arriving at the true valuation under the provisions of Chapters 1-10 of this title, they are authorized and empowered to institute a proceeding in equity in the District of Columbia Court of Appeals petitioning said court to instruct them as to the element or elements of value to be by them considered as aforesaid, and the particular utility under valuation at the time shall be made party defendant in said action.

(b) Any public utility or any other person or corporation affected by any final order or decision of the Commission may, within 30 days after the publication thereof, file with the Commission an application in writing requesting a reconsideration of the matters involved, and stating specifically the errors claimed as grounds for such reconsideration. No public utility or other person or corporation shall in any court urge or rely on any ground not so set forth in said application. The Commission, within 30 days after the filing of such application, shall either grant or deny it. Failure by the Commission to act upon such application within such period shall be deemed a denial thereof. If such application be granted, the Commission, after giving notice thereof to all interested parties, shall, either with or without hearing, rescind, modify, or affirm its order or decision. The filing of such an application shall act as a stay upon the execution of the order or decision of the Commission until the final action of the Commission upon the application; provided, that upon written

consent of the utility such order or decision shall not be stayed unless otherwise ordered by the Commission. No appeal shall lie from any order of the Commission unless an application for reconsideration shall have been first made and determined. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 64; Aug. 27, 1935, 49 Stat. 882, ch. 742, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 588, Pub. L. 91-358, title I, § 168(a)(1); 1973 Ed., § 43-704.)

Cross references. — As to valuation, see §§ 43-505 to 43-508.

Section references. — This section is referred to in §§ 43-907, 43-909 and 43-910.

Exclusive method of review. — Section 43-909 provides that the method of review of Public Service Commission orders set forth in this section shall be exclusive. *District of Columbia v. Potomac Elec. Power Co.*, App. D.C., 402 A.2d 430 (1979).

Seeking reconsideration of Public Service Commission order is jurisdictional prerequisite to filing an appeal; however, one need not have been a party to the proceeding before the Public Service Commission to seek reconsideration, one need only be affected by the order in question. *Goodman v. Public Serv. Comm'n*, App. D.C., 309 A.2d 97 (1973).

Request for reconsideration was jurisdictional prerequisite for filing petition of appeal from order of the Public Service Commission approving rate schedules and regulations proposed by a regulated utility. *Watergate Imp. Ass'n v. Public Serv. Comm'n*, App. D.C., 326 A.2d 778 (1974).

Failure to raise issue before Commission barred Court of Appeals from considering it. *Watergate E., Inc. v. Public Serv. Comm'n*, App. D.C., 665 A.2d 943 (1995).

Formal complaint and hearing before the Commission are not necessary conditions precedent to suit in equity. *Hollis v. Kutz*, 255 U.S. 452, 41 S. Ct. 371, 65 L. Ed. 727 (1921).

Occurrence of publication. — “Publication” under subsection (b) of this section does not necessarily occur on the same date that the “final order or decision” is announced. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 414 A.2d 520 (1980).

Absent a complete elaboration of its reasoning at a hearing, “publication” cannot be said to have occurred within the meaning of this section before the Commission's release of the written text of its final order or decision. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 414 A.2d 520 (1980).

Application within 30 days of final order. — Where a 1st order of the Commission in proceedings for increase of rates for electric power was in effect an interlocutory order for-

mulating merely principles on which new rate schedules should be prescribed, and a 2nd order prescribing actual rates was the final order, petition for reconsideration filed within 30 days of the 2nd order, though not filed within 30 days of the 1st order, sufficiently complied with the application requirement of subsection (b) of this section. *Leeman v. Public Utils. Comm'n*, 104 F. Supp. 553 (D.D.C. 1952), rev'd on other grounds sub nom. *Capital Transit Co. v. Public Util. Comm'n*, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

Extension of period in which to accept or deny application held proper. *United States v. Public Serv. Comm'n*, App. D.C., 465 A.2d 829 (1983).

Where 30th day falls on Sunday. — Where the 30th day within which the Commission is required to act on a petition for reconsideration falls on a Sunday, the next day must be deemed the 30th day for purposes of determining whether the Commission acted. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 451 A.2d 90 (1982).

Practice of issuing broad notices is a conscious decision intended by the Public Service Commission to minimize the risk of being so specific that it is precluded from exploring legitimate avenues of review; therefore, a notice advising that a proceeding may encompass “increases or decreases in any of the Company's rates” was sufficient to put persons who could have benefited from intervention on notice that private lines were in fact in issue. *General Servs. Admin. v. Public Serv. Comm'n*, App. D.C., 469 A.2d 1238 (1983).

Until party receives Commission's complete elaboration of reasoning underlying order, it is not in position to file application for reconsideration, at least not without substantial risk of losing its opportunity to pursue missed issues by way of petition for appeal. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 414 A.2d 520 (1980).

Scope of inquiry upon application. — The Commission was not required to range beyond the scope of the application before it and to make a wide-ranging inquiry into the general merchandising practices of the subject company with respect to its equipment. *Association of Fair Competitive Practices in Air Con-*

ditioning, Inc. v. Public Serv. Comm'n, 372 F.2d 934 (D.C. Cir. 1967).

Court of Appeals would not address claim not raised in petition for reconsideration. — Court of Appeals would not address petitioner's claim that Commission's finding was not supported by substantial evidence where claim was not raised in its petition for reconsideration. District of Columbia Tel. Answering Serv. Comm. v. Public Serv. Comm'n, App. D.C., 476 A.2d 1113 (1984).

Petition for reconsideration sufficient. — See Washington, Marlboro & Annapolis Motor Lines v. Public Utils. Comm'n, 114 F. Supp. 321 (D.D.C. 1950), *aff'd*, 206 F.2d 490 (1953).

Cited in Keller v. Potomac Elec. Power Co., 261 U.S. 428, 43 S. Ct. 445, 67 L. Ed. 731

(1923); Lewis v. Potomac Elec. Power Co., 64 F.2d 701 (D.C. Cir. 1933); Washington Ry. & Elec. Co. v. District of Columbia, 77 F.2d 366 (D.C. Cir. 1935); Atlantic Tel. Co. v. Public Serv. Comm'n, App. D.C., 390 A.2d 439 (1978); Washington Pub. Interest Org. v. Public Serv. Comm'n, App. D.C., 393 A.2d 71 (1978), *cert. denied*, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979); Washington Gas Light Co. v. Public Serv. Comm'n, App. D.C., 450 A.2d 1187 (1982); Washington Gas Light Co. v. Public Serv. Comm'n, App. D.C., 483 A.2d 1164 (1984); Office of People's Counsel v. Public Serv. Comm'n, App. D.C., 571 A.2d 206 (1990); Jackson v. Public Serv. Comm'n, App. D.C., 590 A.2d 517 (1991).

§ 43-905. Appeal to Court of Appeals from certain orders; statement to accompany decision; Commission not liable for costs or damages.

(a) The District of Columbia Court of Appeals shall have jurisdiction to hear and determine any appeal from an order or decision of the Commission. Any public utility or any other person or corporation affected by any final order or decision of the Commission, other than an order fixing or determining the value of the property of a public utility in a proceeding solely for that purpose, may, within 60 days after final action by the Commission upon the petition for reconsideration, file with the Clerk of the District of Columbia Court of Appeals a petition of appeal setting forth the reasons for such appeal and the relief sought; at the same time such appellant shall file with the Commission notice in writing of the appeal together with a copy of the petition. Within 20 days of the receipt of such notice of appeal the Commission shall file with the Clerk of the said Court the record, including a transcript of all proceedings had and testimony taken before the Commission, duly certified, upon which the said order or decision of the Commission was based, together with a statement of its findings of fact and conclusions upon the said record, and a copy of the application for reconsideration and the orders entered thereon; provided, that the parties, with the consent and approval of the Commission, may stipulate in writing that only certain portions of the record be transcribed and transmitted. Within this period the Commission or any other interested party shall answer, demur, or otherwise move or plead. Thereupon the appeal shall be at issue and ready for hearing. All such proceedings shall have precedence over any civil cause of a different nature pending in said Court, and the District of Columbia Court of Appeals shall always be deemed open for the hearing thereof. Any such appeal shall be heard upon the record before the Commission, and no new or additional evidence shall be received by the said Court. The said Court, or any judge or judges thereof, before whom any such appeal shall be heard, may require and direct the Commission to receive additional evidence upon any subject related to the issues on said appeal concerning which evidence was improperly excluded in the hearing before the Commission or upon which the

record may contain no substantial evidence. Upon receipt of such requirement and direction the Commission shall receive such evidence and without reasonable delay shall transmit to the said Court the findings of fact made thereon by the Commission and the conclusions of the Commission upon the said facts.

(b) Upon the conclusion of its hearings of any such appeal the Court shall either dismiss the said appeal and affirm the order or decision of the Commission or sustain the appeal and vacate the Commission's order or decision. In either event the Court shall accompany its order by a statement of its reasons for its action and in the case of the vacation of an order or decision of the Commission the statement shall relate the particulars in and the extent to which such order or decision was defective.

(c) Said Commission shall not, nor shall any of its members, officers, agents, or employees, be taxed with any costs, nor shall they or any of them be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said Commission, or any of its members, officers, agents, or employees, shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any public utility or person, nor required in any case to make any deposit for costs or pay for any service to the clerks of any court or to the Marshal of the United States. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 65; Aug. 27, 1935, 49 Stat. 882, ch. 742, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 583, 588, Pub. L. 91-358, title I, §§ 163(i)(2), 168(a)(2); 1973 Ed., § 43-705.)

- I. General Consideration.
- II. Person or Corporation Affected.
- III. Finality of Orders.
- IV. Hearing on Appeal.

I. GENERAL CONSIDERATION.

Section references. — This section is referred to in §§ 43-909 and 43-910.

Exclusive appellate review provisions. — Section 43-909 provides that the appellate review provisions of this section "shall be exclusive." *District of Columbia v. Potomac Elec. Power Co.*, App. D.C., 402 A.2d 430 (1979).

Congress may vest in the Court power to review a Commission order fixing rates for a public service corporation, and to enter the order which they deem the Commission should have made. *Keller v. Potomac Elec. Power Co.*, 261 U.S. 428, 43 S. Ct. 445, 67 L. Ed. 731 (1923).

Right of appeal from Commission order is statutory in character, and the extent of the right in each case depends upon the meaning of the language used in the statute, and not upon ordinary requirements of injunction suits. *United States v. Public Utils. Comm'n*, 151 F.2d 609 (D.C. Cir. 1945).

Administrative Procedure Act applies to actions of Commission. *Washington Pub. Interest Org. v. Public Serv. Comm'n*, App. D.C.,

393 A.2d 71 (1978), cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979).

Seeking reconsideration of Public Service Commission order is jurisdictional prerequisite to filing appeal; however, one need not have been a party to the proceeding before the Commission to seek reconsideration, one need only be affected by the order in question. *Goodman v. Public Serv. Comm'n*, App. D.C., 309 A.2d 97 (1973).

Request for reconsideration was jurisdictional prerequisite for filing petition of appeal from an order of the Public Service Commission approving rate schedules and regulations proposed by regulated utility. *Watergate Imp. Ass'n v. Public Serv. Comm'n*, App. D.C., 326 A.2d 778 (1974).

Orders of Commission increasing electric power rates carry presumption of validity, and those who would upset the rate orders had heavy burden of making a convincing showing that orders were invalid because unjust and unreasonable. *Leeman v. Public Utils. Comm'n*, 104 F. Supp. 553 (D.D.C. 1952), rev'd on other grounds sub nom. *Capital Transit Co. v. Public Util. Comm'n*, 213 F.2d 176

(D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

Review of administrative determinations. — Administrative determinations which are not commands may for all practical purposes determine rights as effectively as the judgment of a court, and may be reexamined by courts under particular statutes providing for the review of orders. *Pollak v. Public Utils. Comm'n*, 191 F.2d 450 (D.C. Cir. 1951), rev'd on other grounds, 343 U.S. 451, 72 S. Ct. 813, 96 L. Ed. 1068 (1952).

Costs on appeal. — The expenses of printing the record and the Commission's brief on appeal were considered costs of that proceeding. *Washington Ry. & Elec. Co. v. District of Columbia*, 77 F.2d 366 (D.C. Cir. 1935).

Cited in *Bebchick v. Public Utils. Comm'n*, 318 F.2d 187 (D.C. Cir.), cert. denied, 373 U.S. 913, 83 S. Ct. 1304, 10 L. Ed. 2d 414 (1963); *Association of Fair Competitive Practices in Air Conditioning, Inc. v. Public Serv. Comm'n*, 372 F.2d 934 (D.C. Cir. 1967); *Washington Gas Light Co. v. Public Serv. Comm'n*, 334 F. Supp. 1062 (D.D.C. 1971); *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 402 A.2d 14, cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 182 (1979); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 414 A.2d 520 (1980); *People's Counsel of Public Serv. Comm'n*, App. D.C., 414 A.2d 520 (1980); *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 450 A.2d 1187 (1982); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 455 A.2d 391 (1982); *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 457 A.2d 776 (1983); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 474 A.2d 1274 (1984); *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 520 A.2d 677 (1987); *Jackson v. Public Serv. Comm'n*, App. D.C., 590 A.2d 517 (1991).

II. PERSON OR CORPORATION AFFECTED.

Word "affected," as used in subsection (a) of this section, was chosen by Congress to expand the privilege of complaint and appeal beyond that contemplated by words it used in other statutes, and beyond the conventional tests used in equity suits seeking restraint of governmental action. *United States v. Public Utils. Comm'n*, 151 F.2d 609 (D.C. Cir. 1945).

One who seeks judicial review of agency action must show impact of such action on himself. *Telephone Users Ass'n v. Public Serv. Comm'n*, App. D.C., 304 A.2d 293 (1973), cert. denied, 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 415 U.S. 934, 94 S. Ct. 449, 39 L. Ed. 2d 492 (1974).

Affected party need not be within zone of interests protected by a regulatory provision in order to challenge agency action on that

basis but instead may raise any relevant question of law in respect to an order or decision. *Atlantic Tel. Co. v. Public Serv. Comm'n*, App. D.C., 390 A.2d 439 (1978).

Person affected includes a consumer of a public utility company. *United States v. Public Utils. Comm'n*, 151 F.2d 609 (D.C. Cir. 1945).

The United States, as a customer of public utility company, had standing as a person affected to prosecute its petition of appeal in court from an order of the Commission determining rates which a company could charge for sale of electric energy in District of Columbia. *United States v. Public Utils. Comm'n*, 151 F.2d 609 (D.C. Cir. 1945).

A commercial and residential electricity consumer had standing to seek review of an order determining the fair rate of return to an electric utility and the increase and gross revenues necessary to obtain such a return. *Goodman v. Public Serv. Comm'n*, 467 F.2d 375 (D.C. Cir. 1972).

Persons using transit service. — Where an order of the Commission authorized a District of Columbia transit company to use radio loudspeakers in its vehicles, the persons who used the services of the transit and intervened before the Commission were "affected by" the Commission's order and could appeal. *Pollak v. Public Utils. Comm'n*, 191 F.2d 450 (D.C. Cir. 1951), rev'd on other grounds, 343 U.S. 451, 72 S. Ct. 813, 96 L. Ed. 1068 (1952).

Transit riders on the buses and streetcars of a carrier were entitled to appeal from an order of the Commission raising their fare. *Bedchick v. Public Utils. Comm'n*, 287 F.2d 337 (D.C. Cir. 1961).

One who alleges that he uses and pays for telephone service is "person or corporation affected by" an order increasing telephone rates. *Telephone Users Ass'n v. Public Serv. Comm'n*, App. D.C., 304 A.2d 293 (1973), cert. denied, 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 415 U.S. 934, 94 S. Ct. 449, 39 L. Ed. 2d 492 (1974).

Competing telephone company was affected by rate level and therefore could raise any issue relevant to the lawfulness of the Commission's actions. *Atlantic Tel. Co. v. Public Serv. Comm'n*, App. D.C., 390 A.2d 439 (1978).

Unlawful discrimination through rate increase not shown. — Given the reasonableness of differing telephone rate classifications, the fact that basic service rates were treated less markedly than were vertical and private lines, did not amount to a showing of unlawful discrimination by Public Service Commission in its grant of a telephone service rate increase. *General Servs. Admin. v. Public Serv. Comm'n*, App. D.C., 469 A.2d 1238 (1983).

III. FINALITY OF ORDERS.

Finality of agency order depends on nature of order rather than its chronology in relation to the whole of the agency proceedings. *Goodman v. Public Serv. Comm'n*, 467 F.2d 375 (D.C. Cir. 1972).

In the context of protracted ratemaking proceeding an agency order establishing basic ratemaking principles may satisfy the requirements of finality and ripeness although the agency formulates the actual rates in a later, related proceeding. *Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n*, App. D.C., 432 A.2d 343 (1981).

It is not necessary that an order be issued at the conclusion of a proceeding; a final order may be issued and reviewed at any point during a Commission proceeding. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 455 A.2d 374 (1982).

For administrative order to be final it must impose obligation, deny a right or fix some legal relationship as a consummation of the administrative process. *Washington Urban League, Inc. v. Public Serv. Comm'n*, App. D.C., 295 A.2d 906 (1972); *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 455 A.2d 374 (1982).

Review of agency's interlocutory order. — Only if the Court of Appeals is clearly convinced that normal appellate review of a final agency decision will be ineffective to vindicate the rights of a party may it review an agency's interlocutory order. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 414 A.2d 516 (1980).

Order defining issues is typically interlocutory. — Although an administrative order defining the issues to be examined in a hearing and limiting evidence to that which is relevant to those issues is final in the sense that it requires one appearing before the Commission to either conform his evidence to the issues or to institute a separate hearing, such order is typically interlocutory, rather than final, for purposes of appeal. *Washington Urban League, Inc. v. Public Serv. Comm'n*, App. D.C., 295 A.2d 906 (1972).

Finality of annual Commission order. — Where each year electric rates were fixed by an order of the Commission, the annual orders became final and conclusive when no person affected thereby availed himself of right of appeal under this section, and the rates so fixed became the legal rates for the periods during which they were to endure, and neither the United States, as a consumer, nor any other party affected thereby could brand them as illegal. *United States v. Public Utils. Comm'n*, 158 F.2d 533 (D.C. Cir. 1946), cert. denied, 331 U.S. 816, 67 S. Ct. 1305, 91 L. Ed. 1835 (1947).

Order held final. — A Commission order establishing a fair rate of return for an electric

utility and an increase in the gross operating revenues necessary to obtain such a rate of return was final order subject to review even though it was followed by later order establishing rate schedules. *Goodman v. Public Serv. Comm'n*, 467 F.2d 375 (D.C. Cir. 1972).

Order held not final. — A Commission order restricting an intervenor's submission of evidence of company's allegedly discriminatory employment practices to evidence that would tend to show that practices affected revenues, expenses or services within the District was not a final appealable order and the intervenor's mere allegation of constitutional violations was not enough to convert the evidentiary ruling into a final order. *Washington Urban League, Inc. v. Public Serv. Comm'n*, App. D.C., 295 A.2d 906 (1972).

IV. HEARING ON APPEAL.

Petition for review timely filed. — See *People's Counsel v. Public Serv. Comm'n*, App. D.C., 451 A.2d 90 (1982).

Scope of review. — If total effect of rates fixed by the Commission for electric power cannot be said to be unjust and unreasonable, judicial inquiry is at an end. *Leeman v. Public Utils. Comm'n*, 104 F. Supp. 553 (D.D.C. 1952), rev'd on other grounds sub nom. *Capital Transit Co. v. Public Util. Comm'n*, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

The Court's review of a Commission order is the narrowest judicial review in the field of administrative law. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 472 A.2d 860 (1984).

Unless the overall effect of a rate is unjust and unreasonable, the Commission's order should be approved, irrespective of infirmities in the methodology used to calculate it. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 661 A.2d 131 (1995).

Burden of proof. — The onus is upon a party seeking appellate review of rate schedules or regulations governing services to make a convincing showing that the rate order was invalid because it was unjust and unreasonable in its consequences. *Watergate Imp. Ass'n v. Public Serv. Comm'n*, App. D.C., 326 A.2d 778 (1974).

Petitioners' burden is substantial, but necessarily so, for a lighter burden would preclude the Commission from engaging in the kind of well-considered experimentation necessary to fulfill its ratemaking function. *Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n*, App. D.C., 432 A.2d 343 (1981).

Exercise of court's judgment. — Though the burden of proof was upon the party contesting a finding of the Commission, the Court must exercise its own judgment where the challenge is based upon a mistake of law, fail-

ure of evidence or a contention of being contrary to the weight of the evidence. *Potomac Elec. Power Co. v. Public Util. Comm'n*, 276 F. 327 (D.C. Cir. 1921), appeal dismissed, 261 U.S. 428, 43 S. Ct. 445, 67 L. Ed. 731 (1923).

Findings of Commission. — The findings of an administrative agency such as the Commission, where there is evidence to support them, may not be set aside by the Court. *Washington Gas Light Co. v. Byrnes*, 137 F.2d 547 (D.C. Cir. 1943), *aff'd sub nom. Vinson v. Washington Gas Light Co.*, 321 U.S. 489, 64 S. Ct. 731, 88 L. Ed. 883 (1944).

When supported by substantial evidence, the Commission's choice between 2 conflicting views will not be disturbed, even though the Court might justifiably have reached a different conclusion had the matter been before it *de novo*. *Washington, Marlboro & Annapolis Motor Lines v. Public Utils. Comm'n*, 114 F. Supp. 321 (D.D.C. 1950), *aff'd*, 206 F.2d 490 (D.C. Cir. 1953).

General opinion of Commission ineffective. — A mere general opinion of the Commission in relation to gas rates, unsupported by findings of fact based on substantial evidence, is ineffective. *Washington Gas Light Co. v. Public Utils. Comm'n*, 55 F. Supp. 627 (D.D.C. 1944).

Full and clear explanation of commission's decision. — A full and clear explanation of a ratemaking decision must include the following components: (1) The Commission must announce the criteria governing the rate determination, and (2) it must explain "how the particular rate order reflects application of these criteria to the facts of the case." *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 661 A.2d 131 (1995).

Commission must base decision on sufficient evidence and explanation. — Before meaningful judicial review to determine the reasonableness of a Commission decision is possible, the Commission must satisfy its own burden to base its decision on sufficient evidence and to explain its actions fully and carefully. *Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n*, App. D.C., 432 A.2d 343 (1981).

Commission's methodology. — While the reasonableness of the "overall effect" of the rate order remains the primary consideration, however, the Commission nonetheless has an obligation to disclose the methodology by which that decision was reached, for the actual methodology used may have a bearing on the court's overall judgment as to the reasonableness of the order. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 661 A.2d 131 (1995).

Admission of petition allegations on appeal. — Where appellants' petition of appeal from an order of the Commission permitting use of radio loudspeakers on vehicles of transit

system for the District of Columbia, stated that they were obliged to use the vehicles of the system and were thereby subjected against their will to the broadcasts in issue and the appellees moved to dismiss the petitions, allegations of the petitions were admitted. *Pollak v. Public Utils. Comm'n*, 191 F.2d 450 (D.C. Cir. 1951), *rev'd on other grounds*, 343 U.S. 451, 72 S. Ct. 813, 96 L. Ed. 1068 (1952).

Record brought to Court's attention at time of hearing. — An order of the Court record vacating a Commission order granting a utility a rate increase could not be reversed on theory that the judge did not have before him the record of the case before the Commission where material parts of the record were brought to the attention of the judge at time of the hearing and before his decision was rendered. *Washington Gas Light Co. v. Byrnes*, 137 F.2d 547 (D.C. Cir. 1943), *aff'd sub nom. Vinson v. Washington Gas Light Co.*, 321 U.S. 489, 64 S. Ct. 731, 88 L. Ed. 883 (1944).

Commission order held not supported by substantial evidence. — Where the Commission's witness found that an investors' appraisal of return required on common stock capital of gas company was 11.68 percent, and company's witnesses fixed it at 10.98 percent, both exclusive of cost of financing, and earnings-price ratio of companies involved to which Commission's witness testified was 10.54 percent, Commission's action in substituting 9 percent as a reasonable allowance in fixing rates and in amending sliding scale order so as to reduce primary rate of return from 6½ percent to 5¾ percent, was void, as not supported by substantial evidence. *Washington Gas Light Co. v. Public Utils. Comm'n*, 55 F. Supp. 627 (D.D.C. 1944).

Subsequent rate order did not render challenge of prior order moot. — The issuance of a subsequent rate order did not render moot and impractical the question of relief in proceedings challenging a prior rate order where the utility was never allowed to recoup revenue losses experienced as result of the prior order, which was found to be arbitrary and unreasonable; even if prior order were technically moot, it presented issues of a continuing nature. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 380 A.2d 126 (1977), rehearing *en banc*, App. D.C., 402 A.2d 14, cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979).

Presumption of prudence. — If a presumption of prudence regarding a utility's expenditures applies at all, it is sufficient to carry the day only when there is no showing that a utility's costs are inefficient or improvident. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 661 A.2d 131 (1995).

§ 43-906. Appeal limited to questions of law.

In the determination of any appeal from an order or decision of the Commission the review by the Court shall be limited to questions of law, including constitutional questions; and the findings of fact by the Commission shall be conclusive unless it shall appear that such findings of the Commission are unreasonable, arbitrary, or capricious. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 66; Aug. 27, 1935, 49 Stat. 883, ch. 742, § 2; 1973 Ed., § 43-706.)

Section references. — This section is referred to in §§ 43-909 and 43-910.

Congress vested sole ratemaking authority in the Commission. Potomac Elec. Power Co. v. Public Serv. Comm'n, App. D.C., 402 A.2d 14, cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979).

And not the Court of Appeals. — The power to make rates was clearly delegated by Congress with this section to the Commission, not to the Court of Appeals. Potomac Elec. Power Co. v. Public Serv. Comm'n, App. D.C., 402 A.2d 14, cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979).

Exclusive appellate review provisions. — Section 43-909 provides that the appellate review provisions of this section "shall be exclusive." District of Columbia v. Potomac Elec. Power Co., App. D.C., 402 A.2d 430 (1979).

Commission obligated to facilitate judicial review. — The Commission should keep in mind its obligation to facilitate judicial review of its orders and should assemble record and make findings which cover all the relevant issues and should indicate the formula chosen and should make clear the evidentiary support for its findings under whatever formula adopted. Washington Gas Light Co. v. Baker, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

It is the responsibility of the Public Service Commission to present its decisions in a manner amenable to judicial review. Telephone Users Ass'n v. Public Serv. Comm'n, App. D.C., 304 A.2d 293 (1973), cert. denied, 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 415 U.S. 934, 94 S. Ct. 1449, 39 L. Ed. 2d 492 (1974).

To facilitate judicial review, the Commission must indicate fully and carefully the methods by which, and the purposes for which, it has chosen to act, as well as its assessment of the consequences of its orders for the character and future development of the industry. Washington Gas Light Co. v. Public Serv. Comm'n, App. D.C., 450 A.2d 1187 (1982).

Federal precedent applicable. — Since the Court's review power over the Commission is comparable to the authority vested in the federal courts to review Federal Energy Regulatory Commission orders, federal precedent is applicable. Washington Gas Light Co. v. Public

Serv. Comm'n, App. D.C., 452 A.2d 375 (1982), cert. denied, 462 U.S. 1107, 103 S. Ct. 2454, 77 L. Ed. 2d 1334 (1983).

Orders of Commission increasing rates carry presumption of validity, and those who would upset the rate orders had heavy burden of making a convincing showing that orders were invalid because unjust and unreasonable. Leeman v. Public Utils. Comm'n, 104 F. Supp. 553 (D.D.C. 1952), rev'd on other grounds sub nom. Capital Transit Co. v. Public Util. Comm'n, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

The requirement that the Commission fully and clearly explain its actions does not detract from the presumptive validity of Commission rate orders. The petitioner challenging an order carries the heavy burden of demonstrating clearly and convincingly a fatal flaw in the action taken. Potomac Elec. Power Co. v. Public Serv. Comm'n, App. D.C., 457 A.2d 776 (1983).

Review to accord great respect to Commission rate making. — In reviewing order of Public Service Commission, it is especially important to accord great respect to Commission in complex, esoteric area such as rate making in which Commission has been entrusted with difficult task of deciding among many competing arguments and policies. Goodman v. Public Serv. Comm'n, 497 F.2d 661 (D.C. Cir. 1974); People's Counsel v. Public Serv. Comm'n, App. D.C., 455 A.2d 391 (1982); Office of People's Counsel v. Public Serv. Comm'n, App. D.C., 610 A.2d 240 (1992).

Scope of review. — On appeals from orders of the Commission increasing rates, the Court could consider whether the Commission committed any error of law vitiating its orders, whether conclusions were adequately supported by findings of fact, and whether findings of fact were sustained by substantial evidence. Leeman v. Public Utils. Comm'n, 104 F. Supp. 553 (D.D.C. 1952), rev'd on other grounds sub nom. Capital Transit Co. v. Public Util. Comm'n, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

If total effect of rates fixed by the Commission of the District of Columbia cannot be said to be unjust and unreasonable, judicial inquiry is at an end. Leeman v. Public Utils. Comm'n,

104 F. Supp. 553 (D.D.C. 1952), rev'd on other grounds sub nom. *Capital Transit Co. v. Public Util. Comm'n*, 213 F.2d 176 (D.C. Cir.), cert. denied, 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

If Commission's order providing for increase in rate to be charged produces no arbitrary results, Court's inquiry is at an end. *Allied Civic Group, Inc. v. Public Utils. Comm'n*, 125 F. Supp. 453 (D.D.C. 1954), rev'd on other grounds sub nom. *Spiegel v. Public Util. Comm'n*, 226 F.2d 29 (D.C. Cir.), cert. denied, 350 U.S. 904, 76 S. Ct. 182, 100 L. Ed. 794 (1955).

A reviewing court's function is normally exhausted when it has determined that the Commission has respected procedural requirements, has made findings based on substantial evidence and has applied the correct legal standards to its substantive deliberations. *Atlantic Tel. Co. v. Public Serv. Comm'n*, App. D.C., 390 A.2d 439 (1978); *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 610 A.2d 240 (1992).

If the overall impact of the rate order is just and reasonable and produces no arbitrary result, judicial inquiry is at an end. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 399 A.2d 43 (1979).

As long as there is substantial evidence to support a reasoned conclusion of the Commission, the reviewing court must affirm. *Washington Pub. Interest Org. v. Public Serv. Comm'n*, App. D.C., 446 A.2d 28 (1982).

In reviewing an order the role of the Court of Appeals is to determine whether the overall impact of the rate order is just and reasonable, and to insure that the Commission respected procedural requirements, made findings based on substantial evidence, and applied correct legal standards to its substantive deliberations. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 455 A.2d 391 (1982); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 455 A.2d 402 (1982); *United States v. Public Serv. Comm'n*, App. D.C., 465 A.2d 829 (1983).

The reviewing court is obliged to examine the record to determine whether the Commission has acted arbitrarily, and whether each component of the Commission order is supported by substantial evidence. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 462 A.2d 1105 (1983).

Narrow in scope. — The scope of the appellate court's review of the Public Service Commission's orders is narrow. *Jordan v. Public Serv. Comm'n*, App. D.C., 622 A.2d 1106 (1993).

Court will not review entire record. — On appeal from order of the Commission, a case is not before the court de novo, and Court will not consider and review entire record. *Washington, Marlboro & Annapolis Motor Lines v. Public Utils. Comm'n*, 114 F. Supp. 321 (D.D.C. 1950), aff'd, 206 F.2d 490 (D.C. Cir. 1953).

Burden of proof. — Party seeking review of Public Service Commission rate-making order carries the heavy burden of demonstrating clearly and convincingly a fatal flaw in the action taken; the PSC has the burden of showing fully and clearly why it has taken the particular rate-making action. *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 483 A.2d 1164 (1984).

Utility company had the general burden of persuasion in support of its application for a rate change but it was not also the utility's burden to justify the continued usage of an allocation formula which it had employed for several years. *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 483 A.2d 1164 (1984).

There is independent burden on Commission to explain actions fully and clearly, by: (1) Announcing the criteria governing its determination; and (2) explaining how the particular order reflects application of these criteria to the facts of the case. *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 450 A.2d 1187 (1982); *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 457 A.2d 776 (1983).

A full and clear explanation of a ratemaking decision must include the following components: (1) The Commission must announce the criteria governing the rate determination, and (2) it must explain how the particular rate order reflects application of these criteria to the facts of the case. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 661 A.2d 131 (1995).

Commission's fully and carefully explained ruling entitled to great deference. — Where the Commission has accompanied its ruling with the required full and careful explanation, that ruling is entitled to great deference. *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 452 A.2d 375 (1982), cert. denied, 462 U.S. 1107, 103 S. Ct. 2454, 77 L. Ed. 2d 1334 (1983), aff'd, App. D.C., 483 A.2d 1164 (1984).

Disclosure of methodology. — While the reasonableness of the "overall effect" of the rate order remains the primary consideration, however, the Commission nonetheless has an obligation to disclose the methodology by which that decision was reached, for the actual methodology used may have a bearing on the court's overall judgment as to the reasonableness of the order. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 661 A.2d 131 (1995).

Scope of review more limited in reviewing denial of utility's request for emergency rate relief. — The Court of Appeals has an even more limited role in reviewing a denial of a utility's request for emergency rate relief rather than a permanent rate order. *Potomac*

Elec. Power Co. v. Public Serv. Comm'n, App. D.C., 457 A.2d 776 (1983).

Review of Utility Commission order is narrowest judicial review in administrative law. *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 450 A.2d 1187 (1982); *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 457 A.2d 776 (1983); *United States v. Public Serv. Comm'n*, App. D.C., 465 A.2d 829 (1983); *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 571 A.2d 206 (1990); *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 610 A.2d 240 (1992); *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 661 A.2d 131 (1995).

Theory of rate making not subject to same substantiation principle applied to fact-finding. — Although a theory of rate making must be reasonable, explained, and supported, it is not subject to the same substantiation principle as the substantial evidence test applicable to fact-finding. *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 450 A.2d 1187 (1982).

Total effect of rate order determines validity. — It is the total effect of a rate order, rather than the theory employed, that determines its validity. *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 450 A.2d 1187 (1982).

Infirmities in methodology notwithstanding, rate may be approved. — Unless the overall effect of a rate is unjust and unreasonable, the Commission's order should be approved, irrespective of infirmities in the methodology used to calculate it. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 661 A.2d 131 (1995).

Policy decisions are within the exclusive domain of the Commission; they are beyond both the jurisdiction and the competence of a reviewing court. *Washington Metro. Area Transit Auth. v. Public Serv. Comm'n*, App. D.C., 486 A.2d 682 (1984).

The commission may not depart from its own established policy without providing a reasonable explanation for doing so. *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 610 A.2d 240 (1992).

Challenging party's burden. — The party challenging a rate order bears the burden of clearly demonstrating arbitrary action, which burden cannot be met by advancing alternative techniques from which the Commission could have chosen. *Goodman v. Public Serv. Comm'n*, 497 F.2d 661 (D.C. Cir. 1974).

The burden is on the challenging party to show that a rate order is unlawful because it is unjust and unreasonable in its consequences. *Atlantic Tel. Co. v. Public Serv. Comm'n*, App. D.C., 390 A.2d 439 (1978).

Petitioners bear the heavy burden of showing a fatal flaw which renders the Commission's

findings and conclusions unreasonable, arbitrary and capricious, a burden not met by merely setting forth an acceptable alternative to Commission action. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 455 A.2d 391 (1982).

When supported by substantial evidence, Commission's choice between 2 conflicting views will not be disturbed, even though the Court might justifiably have reached a different conclusion had the matter been before it de novo. *Washington, Marlboro & Annapolis Motor Lines v. Public Utils. Comm'n*, 114 F. Supp. 321 (D.D.C. 1950), *aff'd*, 206 F.2d 490 (D.C. Cir. 1953).

Criteria for setting aside or approving rate order. — Whereas a Commission rate order cannot be set aside unless a petitioner makes a "convincing showing" that it is unreasonable, unjust or discriminatory, the same rate order cannot be approved by a reviewing court without remand for clarification unless and until the Commission has complied with the Administrative Procedure Act by specifying its criteria for the order and clearly explaining how its findings rationally support that determination. *Washington Pub. Interest Org. v. Public Serv. Comm'n*, App. D.C., 393 A.2d 71 (1978), *cert. denied*, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979).

A reviewing court must ascertain that, in striking a balance between the competing consumer and investor interests, the Commission has given reasoned consideration to each of the pertinent factors. *Washington Gas Light Co. v. Public Serv. Comm'n*, App. D.C., 450 A.2d 1187 (1982).

Determination of arbitrariness. — In analyzing whether a new rate established by the Public Service Commission was or was not arbitrary, each component of determination was to be analyzed; the reviewing court was to ascertain whether each of the elements of Commission's order was supported by substantial evidence in the record. *Goodman v. Public Serv. Comm'n*, 497 F.2d 661 (D.C. Cir. 1974).

Demonstrating reversible error. — A petitioner must establish clearly and convincingly a fatal flaw in the action taken to demonstrate reversible error. *People's Counsel v. Public Serv. Comm'n*, App. D.C., 399 A.2d 43 (1979); *Metropolitan Wash. Bd. of Trade v. Public Serv. Comm'n*, App. D.C., 432 A.2d 343 (1981); *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 610 A.2d 240 (1992).

Subsidiary findings subject to review. — Where the findings of the Public Service Commission with respect to the rate base and net revenues of the telephone company directly influenced ultimate determination of rates that company could charge, the findings, though subsidiary, were subject to judicial review. *Telephone Users Ass'n v. Public Serv. Comm'n*, App.

D.C., 304 A.2d 293 (1973), cert. denied, 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 415 U.S. 934, 94 S. Ct. 1449, 39 L. Ed. 2d 492 (1974).

Presumption of prudence. — Put succinctly: If a presumption of prudence regarding a utility's expenditures applies at all, it is sufficient to carry the day only when there is no showing that a utility's costs are inefficient or improvident. *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 661 A.2d 131 (1995).

Actions of Commission upheld. — Rejection by the Commission of a claim that since the summer of the test year used in connection with a power company rate increase was abnormally cool, gross test year revenues should be normalized to reflect the normal demand for energy for air conditioning was not unreasonable, arbitrary or capricious. *Goodman v. Public Serv. Comm'n*, App. D.C., 309 A.2d 97 (1973).

Rejection of the argument that additional operating revenues generated from anticipated additions to power plant obviated need for present rate increase was not unreasonable, arbitrary or capricious in light of lack of evidence on projected revenues or expenses for future. *Goodman v. Public Serv. Comm'n*, App. D.C., 309 A.2d 97 (1973).

The Commission's computation of rate base of power company seeking rate increase by including actual cost of construction work in progress rather than capitalizing the interest on funds committed to construction was not unreasonable, arbitrary, or capricious. *Goodman v. Public Serv. Comm'n*, App. D.C., 309 A.2d 97 (1973).

Calculation of the additional operating revenues necessary to realize the necessary after-tax rate increase by using statutory federal income tax rate was reasonable and proper. *Goodman v. Public Serv. Comm'n*, App. D.C., 309 A.2d 97 (1973).

A jurisdictional cost allocation, computed in reliance upon the average and excess demand method rather than basis of rate of growth did not unfairly and irrationally discriminate against District customers to the benefit of customers in other jurisdictions, and the Public Service Commission's acceptance of such computation was not unreasonable, arbitrary or capricious. *Goodman v. Public Serv. Comm'n*, App. D.C., 309 A.2d 97 (1973).

The Public Service Commission acted properly, in making allowance for federal income taxes in an electric power rate case, in applying the maximum statutory tax rate. *Goodman v. Public Serv. Comm'n*, 497 F.2d 661 (D.C. Cir. 1974).

The determination by the Public Service Commission, which granted electric utility a rate increase, that residential class should not bear burden of significant rate increases and that rate increases of 10.4 percent for residential class, -15.1 percent for commercial and

industrial class and 22.2 percent for high tension class and the differentials in the inherent rates of return of 5.63 percent, 7.78 percent and 8.27 percent from such classes respectively were just, reasonable and nondiscriminatory was supported by substantial evidence. *Apartment House Council of Metropolitan Washington, Inc. v. Public Serv. Comm'n*, App. D.C., 332 A.2d 53 (1975).

Commission acted within the scope of its powers in permitting unregulated telephone company to file individual case basis tariffs pursuant to the Commission's expedited compliance procedures rather than requiring formal notice and comment rate-making procedures under § 43-601(d). *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 571 A.2d 206 (1990).

Public Service Commission's decision to use parent telephone company's capital structure for ratemaking purposes, rather than the capital structure of the subsidiary itself, was not unreasonable, arbitrary, and capricious and the Commission's findings were based upon substantial evidence and were adequately explained. *Bell Atlantic—Washington, D.C., Inc. v. Public Serv. Comm'n*, App. D.C., 655 A.2d 1231 (1995).

Economic justification for a new billing structure set forth in the Commission's orders was supported by the record. *Watergate E., Inc. v. Public Serv. Comm'n*, App. D.C., 665 A.2d 943 (1995).

Erroneous actions by Commission. — Where attrition, a condition which can only be exemplified by showing a trend over a series of years, was claimed, the Public Service Commission erred in refusing, in a rate-making case, to consider the telephone company's evidence for years 1966 through 1969 on ground that whatever attrition occurred during 1966-1969 period had been recognized and allowed for in decision in previous rate case. *Telephone Users Ass'n v. Public Serv. Comm'n*, App. D.C., 304 A.2d 293 (1973), cert. denied, 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 415 U.S. 934, 94 S. Ct. 1449, 39 L. Ed. 2d 492 (1974).

In view of the evidence that the telephone company's forecasts in the past had proved accurate, that the Public Service Commission auditors were permanently assigned to the telephone company's premises and continuously audited its books and that the company's expert testified that the 1972 forecast was developed in the ordinary course of business as part of the normal budgetary process, the Commission erred in refusing, in a rate-making proceeding, to consider company's 1972 forecast. *Telephone Users Ass'n v. Public Serv. Comm'n*, App. D.C., 304 A.2d 293 (1973), cert. denied, 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 415 U.S. 934, 94 S. Ct. 1449, 39 L. Ed. 2d 492 (1974).

Remand required for further findings by Commission. — Where the Public Service Commission failed in a rate-making case to make adequate findings based on evidence in the record respecting telephone company's claim of attrition, remand for further findings was required. *Telephone Users Ass'n v. Public Serv. Comm'n*, App. D.C., 304 A.2d 293 (1973), cert. denied, 415 U.S. 933, 94 S. Ct. 1448, 39 L. Ed. 2d 492, 415 U.S. 934, 94 S. Ct. 1449, 39 L. Ed. 2d 492 (1974).

Cited in *District of Columbia Transit Sys. v. Public Utils. Comm'n*, 292 F.2d 734 (D.C. Cir. 1961); *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 330 A.2d 236 (1974); *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 380 A.2d 126 (1977), rehearing en banc, App.

D.C., 402 A.2d 14, cert. denied, 444 U.S. 926, 100 S. Ct. 265, 62 L. Ed. 2d 182 (1979); *Potomac Elec. Power Co. v. Public Serv. Comm'n*, App. D.C., 455 A.2d 374 (1982); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 472 A.2d 860 (1984); *People's Counsel v. Public Serv. Comm'n*, App. D.C., 474 A.2d 835 (1984); *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 482 A.2d 404 (1984); *C & P Tel. Co. v. Public Serv. Comm'n*, App. D.C., 514 A.2d 1159 (1986); *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 520 A.2d 677 (1987); *Regalado v. United States*, App. D.C., 572 A.2d 416 (1990); *Watergate E., Inc. v. District of Columbia Public Serv. Comm'n*, App. D.C., 662 A.2d 881 (1995).

§ 43-907. Orders to remain in force pending appeal; suspension of order.

All orders and decisions of the Commission shall remain in full effect, except as provided in § 43-904 hereof, unless and until they are suspended, superseded, or rescinded by the Commission or are vacated by lawful order of the District of Columbia Court of Appeals; provided, that if in any petition made to the said Court appealing from an order or decision of the Commission it be alleged that substantial and irreparable property loss would be occasioned to the petitioner by the operation of the said order pending the determination of the said appeal, the Court shall set a time and place for hearing upon the said allegation after not less than 3 days notice to the Commission (during which period the execution of the order or decision shall be stayed), and the said Court may then, upon a clear showing of the irreparable and substantial property loss as alleged, suspend the effective date of the said order. No such suspension shall be for a greater period than 60 days without further order after notice or hearing by the Court. In the event of the issuance of an order suspending the operation of any order of the Commission, the Court may include therein such provision as it deems advisable for the preservation of records or accounts and the impounding or otherwise securing of moneys necessary to give effect to the order of the Commission in the event the said order is sustained. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 67; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 588, Pub. L. 91-358, title I, § 168(a)(3); 1973 Ed., § 43-707.)

Holding rate schedule invalid retrospectively. — The high profits of an electric company and the alleged fact that the Commission had not been as vigilant as it might have been in driving down the company's rates did not establish an error of law requiring judicial

remedy and did not justify retrospectively holding invalid rate schedules authorized by the Commission over a course of many years. *United States v. Public Utils. Comm'n*, 158 F.2d 533 (D.C. Cir. 1946), cert. denied, 331 U.S. 816, 67 S. Ct. 1305, 91 L. Ed. 1835 (1947).

§ 43-908. Authority of Commission to rescind its order after appeal is filed.

The Commission may at any time, rescind, alter, modify, or amend its order. If, after appeal is filed, the Commission shall rescind the order or decision appealed from, the appeal shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order or decision shall take the place of the original order and the Court shall proceed thereon as though the late order had been made by the Commission in the first instance. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 69; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2; 1973 Ed., § 43-709.)

Cross references. — As to amendment or revocation of orders, see § 43-902.

Section references. — This section is referred to in § 43-909.

§ 43-909. Method of review exclusive.

The method of review of the orders and decisions of the Commission provided by §§ 43-904 to 43-908, herein, shall be exclusive. (Mar. 4, 1913, ch. 150, § 8, par. 69a; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2; 1973 Ed., § 43-710.)

Section references. — This section is referred to in § 43-910.

Cited in *District of Columbia v. Potomac Elec. Power Co.*, App. D.C., 402 A.2d 430 (1979).

§ 43-910. Severability.

If any provisions of §§ 43-612, 43-904 to 43-909 or the application to any person or circumstances is held invalid, the invalidity of the remainder of said sections and of the application of such provision to other persons and circumstances shall not be affected thereby. (Aug. 27, 1935, 49 Stat. 885, ch. 742, § 4; 1973 Ed., § 43-711.)

§ 43-911. Production of incriminating evidence compellable; immunity from prosecution.

No person shall be excused from testifying or from producing books, accounts, and papers in any proceeding based upon or growing out of any violation of the provisions of Chapters 1-10 of this title, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempted from prosecution or punishment for perjury; provided further, that the immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 70; 1973 Ed., § 43-712.)

Cross references. — As to criminal penalties for failure to testify or to produce documentary evidence, see § 43-305.

§ 43-912. Commission to furnish certified copies of orders.

Upon application of any person the Commission shall furnish certified copies, under the seal of the Commission, of any order made by it, which shall be prima facie evidence of the facts stated therein. (Mar. 4, 1913, 37 Stat. 990, ch. 150, § 8, par. 71; 1973 Ed., § 43-713.)

CHAPTER 10. GAS AND ELECTRIC CORPORATIONS.

Sec.	Sec.
43-1001. Public Service Commission; general powers.	in suit to collect for gas or electricity furnished.
43-1002. Approval of construction of gas or electric plant.	43-1005. Appointment and removal of inspectors and assistant inspectors of gas and meters.
43-1003. Inspectors of gas and electric meters; inspection of meters; Commission to make rules and regulations.	43-1006. Inspector of Gas and Meters to transfer books to Commission.
43-1004. Excessive charges a complete defense	

§ 43-1001. Public Service Commission; general powers.

The Commission shall, within its jurisdiction:

(1) Have general supervision of all gas corporations and electrical corporations having authority under any general or special law or under any charter or franchise to lay down, erect, or maintain wires, pipes, conduits, ducts, or other fixtures in, over, or under the streets, highways, and public places in the District of Columbia for the purpose of furnishing or distributing gas or of furnishing or transmitting electricity for light, heat, or power, or maintaining underground conduits or ducts for electrical conductors, and all gas plants and electric plants owned, leased, or operated by any corporation.

(2) Investigate and ascertain, from time to time, the quality and quantity of gas supplied by persons or corporations; examine or investigate the methods employed by such persons and corporations in manufacturing, distributing, and supplying gas or electricity for light, heat, or power, and in transmitting the same, and have power to order such reasonable improvements as will reasonably promote the public interest, preserve the public health, and protect those using such gas or electricity and those employed in the manufacture and distribution thereof or in the manufacture and operation of the works, wires, poles, lines, conduits, ducts, and systems connected therewith, and have power to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts, and other reasonable devices, apparatus, and property of gas corporations and electrical corporations.

(3) Have power by order to fix from time to time standards for determining the purity or the measurement of the illuminating power of gas to be manufactured, distributed, or sold by persons or corporations for lighting, heating, or power purposes, and to prescribe from time to time the efficiency of the electric supply system, of the current supplied, and of the lamps furnished by the persons or corporations generating and selling electric current, and by order to require the gas so manufactured, distributed, or sold to equal the standards so fixed by it, and to prescribe from time to time the reasonable minimum and maximum pressure at which gas shall be delivered by said persons or corporations. For the purpose of determining whether the gas manufactured, distributed, or sold by such persons or corporations for lighting, heating, or power purposes conforms to the standards of illuminating power, purity, and pressure, and for the purpose of determining whether the efficiency of the electric supply system, of the current supplied, and of the lamps furnished conforms to the orders issued by the Commission, the Commission

shall have power, of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering, and supplying gas or electricity, and shall have access, through its members or persons employed and authorized by it to make such examinations and investigations, to all parts of the manufacturing plants owned, used, or operated for the manufacture, transmission, or distribution of gas or electricity by any such person or corporation. Any employee or agent of the Commission who divulges any fact or information which may come to his knowledge during the course of any such inspection or examination, except insofar as he may be directed by the Commission, or by a court or judge thereof, or authorized by law, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$50 nor more than \$500 for each offense. (Mar. 4, 1913, 37 Stat. 986, ch. 150, § 8, par. 55; 1973 Ed., § 43-601.)

Cross references. — As to investigation of personal injuries or deaths occurring from operation of utility, see § 43-101.

As to liberal construction of chapter, see § 43-103.

As to saving clauses, see §§ 43-105 and 43-106.

As to criminal penalties, see §§ 43-306 to 43-308.

As to disposition of fines and forfeitures, see § 43-312.

As to additional prosecutions under other laws, see § 43-313.

As to testing meters and quality of product, see § 43-520.

As to fees for testing meters or measuring devices, see § 43-521.

§ 43-1002. Approval of construction of gas or electric plant.

No gas corporation or electrical corporation shall begin the construction of a gas plant or electric plant without first having obtained the permission and approval of the Commission. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 56; 1973 Ed., § 43-602.)

Two-step review approved. — The Public Service Commission's policy allowing for a two-step review of new utility construction, separating prudence reviews from ratemaking, was approved by the court. *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 610 A.2d 240 (1992).

Approval of proposed construction budget only reflects Commission's preliminary judgment, consistent with its statutory duty to supervise the Washington Gas Light Company's construction plans even before those plans will have an effect on the rates charged customers. *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 482 A.2d 404 (1984).

Failure to obtain advance approval. — Given the Public Service Commission's (PSC) thorough examination of the reasonableness of power company's construction of the combustion turbines (CT), as well as the commission's examination of the reasonableness of the power company's cost recovery for the CTs, the court was satisfied that the commission's apparent acquiescence in the power company's failure to obtain PSC approval in advance of construction of the CTs, even if such approval was statutorily required, did not rise to the level of prejudicial error. *Office of People's Counsel v. Public Serv. Comm'n*, App. D.C., 610 A.2d 240 (1992).

§ 43-1003. Inspectors of gas and electric meters; inspection of meters; Commission to make rules and regulations.

(a) The Commission shall appoint inspectors of gas meters, whose duty it shall be, when required by the Commission, to inspect, examine, and ascertain the accuracy of gas meters used or intended to be used for measuring and ascertaining the quantity of gas furnished for light, heat, or power by any person or corporation to or for the use of any person or corporation.

(b) No corporation or person shall furnish, set, or put in use any gas meter which shall not have been inspected and proved for accuracy, or any meter the type of which shall not have been approved by the Commission or by an inspector of the Commission.

(c) The Commission shall appoint inspectors of electric meters, whose duty it shall be, when required by the Commission, to inspect, examine, and ascertain the accuracy of any and all electric meters used or intended to be used for measuring and ascertaining the quantity of electric current furnished for light, heat, or power by any person or corporation to or for the use of any person or corporation, and to inspect, examine, and ascertain the accuracy of all apparatus for testing and proving the accuracy of electric meters; and when found to be or made to be correct the inspector shall stamp or mark all such meters and apparatus with some suitable device, which device shall be recorded in the office of the Commission. No corporation or person shall furnish, set, or put in use any electric meter the type of which shall not have been approved by the Commission or any meter not approved by an inspector of the Commission.

(d) Every gas corporation and electrical corporation shall provide, repair, and maintain such suitable premises and apparatus and facilities as may be required and approved by the Commission for testing and proving the accuracy of gas and electric meters furnished for use by it, and by which apparatus every meter may be tested.

(e) If any consumer to whom a meter has been furnished shall request the Commission in writing to inspect such meter, the Commission shall have the same inspected and tested; if the same, on being so tested, shall be found to be more than 2 per centum defective or incorrect to the prejudice of the consumer, the inspector shall order the gas or electrical corporation forthwith to remove the same and to place instead a correct meter, and the expense of such inspection and test shall be borne by the corporation; if the same, on being so tested, shall be found to be correct, the expense of such inspection and test shall be borne by the consumer.

(f) The Commission shall prescribe such rules and regulations to carry into effect the provisions of this section as it may deem necessary and shall fix uniform reasonable charges for the inspection and testing of meters upon complaint. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 57; Apr. 5, 1939, 53 Stat. 568, ch. 38; Aug. 11, 1971, 85 Stat. 319, Pub. L. 92-94, § 1(a); 1973 Ed., § 43-603.)

Cross references. — As to rules and regulations, see § 43-403.

As to laboratory for Inspector of Gas and Meters, see §§ 43-1101 and 43-1102.

§ 43-1004. Excessive charges a complete defense in suit to collect for gas or electricity furnished.

If it be alleged and established in an action brought in any court for the collection of any charge for gas or electricity that a price has been demanded in excess of that fixed by the Commission or by statute no recovery shall be had therein, but the fact that such excessive charges have been made shall be a complete defense to such action. (Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 58; 1973 Ed., § 43-604.)

Cross references. — As to disconnecting gas for failure to pay charges, see § 43-1105.

Application of section. — This section is directed to the situation in which a utility has

charged a rate higher than that prescribed by the Public Service Commission. *District of Columbia v. Potomac Elec. Power Co.*, App. D.C., 402 A.2d 430 (1979).

§ 43-1005. Appointment and removal of inspectors and assistant inspectors of gas and meters.

A suitable and impartial person, competent as a chemist, who is not a stockholder or employee in any gas works, shall be appointed by the Public Service Commission to be designated and known as Inspector of Gas and Meters, whose duties shall be to test and determine the illuminating power and purity of the gas furnished by any company, person, or persons in the District of Columbia; and to test, prove, and seal all meters that may be hereafter used by them. The Inspector shall give bond to the extent of double his annual salary, and shall take an oath or affirmation, before some officer legally qualified to administer the same, that he will faithfully, diligently, and impartially discharge the duties of his office. The appointment and power to remove the Inspector of Gas and Meters and Assistant Inspectors of Gas and Meters from office is hereby vested in the Commission. All the powers and duties of such inspectors conferred and imposed by statute shall be exercised and performed under the supervision and control of the Commission. (June 23, 1874, 18 Stat. 278, 279, ch. 480, §§ 2, 10; Mar. 4, 1913, 37 Stat. 987, ch. 150, § 8, par. 59; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; 1973 Ed., § 43-605.)

§ 43-1006. Inspector of Gas and Meters to transfer books to Commission.

The Inspector of Gas and Meters provided for by law prior to March 4, 1913, shall transfer and deliver to the Commission all books, maps, papers, records, apparatus, and the property of whatsoever description in his possession, and said Commission is authorized to take possession of all books, maps, papers, records, apparatus, and property of whatsoever description. (Mar. 4, 1913, 37 Stat. 988, ch. 150, § 8, par. 60; 1973 Ed., § 43-606.)

CHAPTER 11. GAS COMPANIES; SPECIAL ACTS.

Sec.

43-1101. Laboratory for testing gas of Washington Gas Light Company.

43-1102. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies.

43-1103. Officer of company may be present at tests.

Sec.

43-1104. Daily inspections.

43-1105. Removal of gas meters for neglect or refusal to pay amount due.

43-1106. Annual reports to Congress.

43-1107. Maximum rates for gas; additional charge for nonpayment of bills.

§ 43-1101. Laboratory for testing gas of Washington Gas Light Company.

A laboratory shall be provided and fitted up by the Washington Gas Light Company, subject to the approval of the Public Service Commission, in the central part of the City of Washington, at a distance as near as may be, of 2,000 feet from any gasworks, and furnished with suitable apparatus for the transaction of the business of the Inspector and Assistant Inspectors of Gas and Meters, for which it is intended, and the laboratory shall be kept open on all business days between the hours of 9:00 a.m. and 4:00 p.m.; provided, that the cost of fitting up said laboratory shall be paid for by each gas company in the District of Columbia in proportion to their sale of gas for the year 1873. (June 23, 1874, 18 Stat. 278, ch. 480, § 3; Mar. 3, 1893, 27 Stat. 543, ch. 199; Mar. 11, 1902, 32 Stat. 63, ch. 181; Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; 1973 Ed., § 43-1201.)

Cross references. — As to gas inspection and testing of meters, see § 43-1003.

§ 43-1102. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies.

Two additional laboratories shall be provided and fitted up by the Washington Gas Light Company, subject to the approval of the Mayor of the District of Columbia, and shall be furnished with suitable apparatus, to the satisfaction of the said Mayor, at a total cost not to exceed \$1,000, for inspecting and testing the illuminating gas manufactured and distributed by the said Washington Gas Light Company and the gas meters used for measuring the gas supplied to consumers by the said Washington Gas Light Company. One of the said laboratories shall be located in the northwestern portion of the City of Washington and the other in the southeastern portion of said city, and the cost of providing and fitting up the said laboratories shall be paid for by the said Washington Gas Light Company. A laboratory shall be provided and fitted up by the Georgetown Gas Light Company, subject to the approval of the Mayor of the District of Columbia, and shall be furnished with suitable apparatus, to the satisfaction of the said Mayor at a total cost not to exceed \$1,000, for inspecting and testing the illuminating gas manufactured and distributed by the said Washington Gas Light Company and the gas meters used for

measuring the gas supplied to consumers by the said Georgetown Gas Light Company; provided, that the cost of providing and fitting up the said laboratory shall be paid by the said Georgetown Gas Light Company; provided further, that the Washington Gas Light Company and the Georgetown Gas Light Company shall, at the beginning of each fiscal year, in proportion to their respective receipts from sales of gas for the fiscal year immediately preceding, provide in advance, by depositing with the Collector of Taxes of the District of Columbia, a sum sufficient to pay the necessary expenses of maintaining the service of inspecting and testing illuminating gas and gas meters, herein provided for, as estimated by the Mayor of the District of Columbia, and not to exceed \$500 per annum for each of the said additional laboratories. (Mar. 3, 1893, 27 Stat. 543, ch. 199; 1973 Ed., § 43-1202.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization

Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

§ 43-1103. Officer of company may be present at tests.

The company, person or persons furnishing the gas may, if they see fit, on each occasion of the testing of the gas by the Inspector, be represented by some officer, but such officer shall not interfere in the testing. (June 23, 1874, 18 Stat. 278, ch. 480, § 4; July 1, 1882, 22 Stat. 138, ch. 263, § 1; 1973 Ed., § 43-1203.)

§ 43-1104. Daily inspections.

Daily inspections, Sundays excepted, shall be made at any time after 12:00 noon and before 12:00 midnight, in the discretion of the Inspector of Gas and Meters. (June 23, 1874, 18 Stat. 278, ch. 480, § 5; Mar. 3, 1893, 27 Stat. 543, ch. 199; 1973 Ed., § 43-1204.)

Cross references. — As to right of access to make examinations and inspections, see § 43-1001.

§ 43-1105. Removal of gas meters for neglect or refusal to pay amount due.

If any person or persons, supplied with gas, neglect or refuse to pay the amount due for the same, such company may stop the gas from entering the premises of such person or persons. In no case shall the officers, servants, or workmen of the company remove a meter from premises supplied by the company, unless by consent of the consumer, without first giving 48 hours notice in writing by leaving the same at the premises of the consumers; and said removal shall take place only between the hours of 8:00 a.m. and 2:00 p.m. It shall be lawful for Congress at any time hereafter to alter, amend, or repeal this section. (June 23, 1874, 18 Stat. 280, ch. 480, §§ 13, 14; 1973 Ed., § 43-1205.)

Cross references. — As to excessive charges as defense for nonpayment, see § 43-1004.

Limited right of assaulting landowner to assert defense of property. — Where defendant asserted defense of property at his trial for assaulting a gas company collector who had attempted to remove a gas meter for failure to pay bill, the trial judge properly instructed

the jury that as long as the employee's entry was nonforcible there was no trespass and that unless the employee had departed from the legitimate purpose of his entry, the defendant was not justified in ejecting him under the guise that he was defending his property. *Jackson v. United States*, App. D.C., 385 A.2d 786 (1978).

§ 43-1106. Annual reports to Congress.

Any association or corporation engaged in the manufacture and sale of gas for illuminating and fuel purposes in the District of Columbia, through its president or other duly authorized officer, shall make a sworn statement to Congress annually, on or before the 1st day of February in each year. Said report shall contain a detailed statement of the condition of the business of said association or corporation for the year ending December 31st next preceding, and such statement shall set forth the actual cost and also present value of the property of such association or corporation used in the conduct of its business, the amount of paid-up capital stock, the amount and character of the indebtedness of such association or corporation, the amount and cost of materials used in making gas, the amount of gas manufactured, the amount of gas sold, the average price per 1,000 cubic feet received for gas sold, the revenue from the sale of all by-products, the revenues from all other sources, the extensions and improvements made in the plant and works, the actual cost of the same, the amount expended for labor, the amount set aside for

depreciation, the amount set apart for insurance and renewals, the amount paid out of earnings for betterments, the amount paid for betterments from other sources, the amount set aside and paid in interest and dividends, the surplus after paying the operating expenses and fixed charges, the statement of the operating expenses to be itemized and classified as is done by other public utility corporations, in the District of Columbia, the names of the stockholders and the amount of the stock held in such association or corporation by each of them on December 31st next preceding the date of such report. (Mar. 2, 1907, 34 Stat. 1133, ch. 2510, § 1; 1973 Ed., § 43-1206.)

Cross references. — As to reports, see § 43-518.

§ 43-1107. Maximum rates for gas; additional charge for nonpayment of bills.

(a) No part of any money appropriated by any act shall be used for the payment to the Washington Gas Light Company or the Georgetown Gas Light Company for any gas furnished by said companies for use in any of the public buildings of the United States or the District of Columbia at a rate in excess of \$.70 per 1,000 cubic feet.

(b) The Washington Gas Light Company shall not charge or collect for gas furnished a private consumer in any part of the District of Columbia a rate in excess of \$.75 per 1,000 cubic feet of gas so furnished: Provided, that if a consumer of gas other than the government or the District of Columbia shall not pay monthly any gas bill within 10 days after the same shall have been presented said gas company may charge and collect from any such consumer so failing to pay said gas bill as aforesaid \$.10 additional for each 1,000 cubic feet of gas presented by said bill; and provided further, that nothing contained in this section shall be construed as limiting or taking away any of the powers vested by law in the Public Service Commission of the District of Columbia.

(c) The Georgetown Gas Light Company shall not be permitted to charge or collect more than \$.85 per 1,000 cubic feet for gas for cooking, illuminating, or other purposes. (Sept. 1, 1916, 39 Stat. 716, ch. 433, § 6; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; 1973 Ed., § 43-1207.)

Cross references. — As to rates and rate making, see § 43-601.

Gas rate making is primarily a legislative process, and the Commission is not bound to the use of any single formula or combination of formulae in determining rates so long as result of rate order is not unjust or

unreasonable, and the Commission can formulate its own standards so long as investor interest against confiscation and consumer interest against exorbitant rates are safeguarded. *Washington Gas Light Co. v. Baker*, 188 F.2d 11 (D.C. Cir. 1950), cert. denied, 340 U.S. 952, 71 S. Ct. 571, 95 L. Ed. 686 (1951).

CHAPTER 12. ELECTRIC LIGHT AND POWER COMPANIES; SPECIAL ACTS.

Sec.

- 43-1201. Extension of overhead wires in Georgetown; extension of underground conduits in Mount Pleasant.
- 43-1202. Conduits and overhead wires for electric lighting prohibited in streets; house connections authorized.
- 43-1203. Certain existing conduits and overhead wires legalized.
- 43-1204. Electric lighting wires west of Rock Creek.

Sec.

- 43-1205. Electric lighting wires east of Rock Creek.
- 43-1206. Permits for repair, extension, and enlargement of conduits.
- 43-1207. Extension of conduits; ducts for use of fire and police wires; maximum price of current; additional charge for nonpayment of bills.
- 43-1208. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.

§ 43-1201. Extension of overhead wires in Georgetown; extension of underground conduits in Mount Pleasant.

The Mayor of the District of Columbia may authorize any electric light company existing June 11, 1896, to construct and use under such regulations as the Council of the District of Columbia may fix conduits for the reception of overhead wires existing on said date within the territory formerly known as Georgetown, and to extend the same by an aggregate of not more than one and one-fourth miles of conduit in the same territory. And the United States Electric Lighting Company may extend its underground conduits and wires east of Rock Creek and within the fire limits to Mount Pleasant, and Washington and Columbia Heights under such regulations as the Council may prescribe. (June 11, 1896, 29 Stat. 401, ch. 419, § 1; 1973 Ed., § 43-1101.)

Cross references. — As to rules and regulations for protection of life, health and property, see § 1-319.

As to inspection and regulation of production, use and control of electrical power, see §§ 1-1019 and 1-1020.

As to jurisdiction and control over public ways, see § 7-102.

As to permits to lay underground conduits in or on highways, streets, and bridges, see §§ 7-1430 and 7-1432.

As to private conduits, see Chapter 13 of this title.

Section references. — This section is referred to in § 43-1202.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(317) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1202. Conduits and overhead wires for electric lighting prohibited in streets; house connections authorized.

Until Congress shall provide for a conduit system it shall be unlawful to lay conduits or erect overhead wires for electric lighting purposes in any road, street, avenue, highway, park, or reservation, except as specifically authorized by law; provided, however, that the Mayor of the District of Columbia is hereby authorized to issue permits for house connections with conduits and overhead wires existing on June 4, 1897, adjacent to the premises with which such connection is to be made; and also permits for public lighting connections with conduits existing on June 4, 1897, in the portion of the street proposed to be lighted. And nothing herein contained shall be construed to affect in any way any litigation pending on June 4, 1897, involving the validity or invalidity or legality of the construction of any conduits made since June 18, 1896, nor to prevent the United States Electric Lighting Company from extending conduits into Columbia Heights, Washington Heights, and Mount Pleasant within the fire limits as specifically provided in §§ 43-1201 and 43-1401. (Mar. 3, 1897, 29 Stat. 673, ch. 387; June 4, 1897, 30 Stat. 41, ch. 2; 1973 Ed., § 43-1102.)

Cross references. — As to similar provisions prohibiting additional telegraph and telephone wires, see § 43-1401.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1203. Certain existing conduits and overhead wires legalized.

All conduits existing on July 7, 1898, within the fire limits, and all overhead electric light wires existing on July 7, 1898, without the fire limits in the District of Columbia are hereby legalized until otherwise provided by law, and house connections may be made with such overhead electric light wires outside such fire limits. (July 7, 1898, 30 Stat. 664, ch. 571, § 1; 1973 Ed., § 43-1103.)

§ 43-1204. Electric lighting wires west of Rock Creek.

The Mayor of the District of Columbia is hereby authorized to issue permits to electric light companies existing on July 8, 1898, in the District of Columbia for the extension of overhead electric wires existing on July 8, 1898, outside the fire limits and west of Rock Creek to be used for lighting purposes only. (July 8, 1898, 30 Stat. 753, Joint Res. No. 59; 1973 Ed., § 43-1104.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1205. Electric lighting wires east of Rock Creek.

The Mayor of the District of Columbia is hereby authorized, under conditions and regulations to be prescribed by the Council of the District of Columbia, to permit the erection of poles and the stringing of overhead wires thereon outside of the fire limits and east of Rock Creek for electric lighting purposes only. (July 1, 1902, 32 Stat. 602, ch. 1352, § 1; 1973 Ed., § 43-1105.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(318) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1206. Permits for repair, extension, and enlargement of conduits.

The Mayor of the District of Columbia is hereby authorized to grant permits for the repair, enlargement, and extension, under proper regulations to be prescribed by the Council of the District of Columbia, of electric lighting conduits existing on June 6, 1900, and in every conduit constructed or to be constructed under the provisions of this section, 3 ducts shall be reserved for the use of the United States and the District of Columbia. (June 6, 1900, 31 Stat. 563, ch. 789, § 1; 1973 Ed., § 43-1106.)

Cross references. — As to requirements for new subdivisions or developments to reduce flood hazards, see § 5-302.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(319) of Reorganization Plan No. 3 of 1967 (see Reor-

ganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1207. Extension of conduits; ducts for use of fire and police wires; maximum price of current; additional charge for nonpayment of bills.

The Mayor of the District of Columbia is authorized to grant permits for the repair, enlargement, and extension, under proper regulations to be prescribed by the Council of the District of Columbia, of electric lighting conduits existing on March 3, 1899, and in every conduit constructed or to be constructed under the provisions of this section, 3 ducts shall be reserved for the use of the United States and the District of Columbia. As a condition for the right to use conduits built prior to March 3, 1899, or built or to be built under the provisions of this section, the electric lighting companies shall be required at all times to furnish to the public and to private consumers in all parts of the District of Columbia standard arc lights of not less than 1,000 actual candlepower, at a rate not exceeding \$72 per annum for each arc light. The maximum price of electric current sold or furnished to any consumer in the District of Columbia shall not exceed \$.10 per kilowatt hour. If consumers other than the government shall not pay monthly electric bills within 10 days after the same shall have been presented, said companies may charge and collect from said consumer so failing to pay said bill as aforesaid \$.11 per kilowatt hour for the electric current furnished to said consumer during said month; and provided further, the right to amend, modify, or repeal the privileges granted in this section, and to further limit the prices herein specified, is hereby expressly reserved; any company charging or collecting an amount in excess of the rates prescribed in this section shall be deemed guilty of a misdemeanor, and shall pay to the District of Columbia the sum of \$50 for each and every offense, to be collected as other fines are collected in the District of Columbia. (Mar. 3, 1899, 30 Stat. 1053, ch. 422, § 1; 1973 Ed., § 43-1107.)

Cross references. — As to requirements for new subdivisions or developments to reduce flood hazards, see § 5-302.

As to criminal penalties for discriminatory or unreasonable rate, see §§ 43-302 to 43-304.

As to illegal rates, see § 43-501.

As to rates and rate making, see § 43-601.

Deregulation of streetlighting service. — § 130 of H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that the Public Service Commission is authorized to order and to approve the deregulation of streetlighting service to the District of Columbia as provided in its opinion and order in Formal Case No. 813, dated July 12, 1984 (Order No. 8056), § 43-402, § 43-501, and this section, and provided that the provisions of this opinion and order regarding deregulation of streetlighting service are hereby ratified and

declared to be in effect as of July 12, 1984 and shall continue to be in effect until revoked or rescinded.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(320) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of

Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Rate making based on entire operating property of utility. — Normally, the unit for

rate making purposes for electricity is the entire connected operating property of the utility, without regard to geographical subdivisions, though conditions may be such as to require or permit segregation of a smaller unit. *Leeman v. Public Utils. Comm'n*, 104 F. Supp. 553 (D.D.C. 1952), rev'd on other grounds sub nom. *Capital Transit Co. v. Public Util. Comm'n*, 213 F.2d 176 (D.C. Cir.), 348 U.S. 816, 75 S. Ct. 25, 99 L. Ed. 643 (1954).

§ 43-1208. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.

The Mayor of the District of Columbia is hereby authorized, in his discretion, to permit the Potomac Electric Power Company to make connections between its conduits and the conduits of the Washington Railway and Electric Company and all other companies controlled by the Washington Railway and Electric Company for the purpose of furnishing electric current through the said conduits for public and private uses, the use of said railway companies' conduits to be upon such terms as may be agreed upon between the said companies. (Apr. 27, 1904, 33 Stat. 376, ch. 1628, § 1; 1973 Ed., § 43-1108.)

Cross references. — As to joint use of utility facilities, see § 43-502.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 13. PRIVATE CONDUITS.

Sec.	Sec.
43-1301. Conditions under which private conduits may be laid.	43-1303. Right to alter, amend, or repeal reserved.
43-1302. Penalty for refusal to remove conduits.	43-1304. Construction of tunnels and structures in Anacostia River.

§ 43-1301. Conditions under which private conduits may be laid.

The Mayor of the District of Columbia is hereby authorized to grant permission to lay conduits for the transmission of electric power and pipes for the transmission of steam in alleys in the District of Columbia, under the following conditions, namely:

(1) The conduits or pipes shall be laid entirely within a square or block, and shall not cross or enter any avenue, street, or highway.

(2) The conduits and pipes shall be located as directed by said Mayor and be laid under his inspection; and the cost of such inspection, together with the cost of replacing all improved pavements disturbed in connection with said work, shall be paid in advance by the party desiring to lay said conduits or steam pipes.

(3) The conduits or pipes shall be used only to connect the premises owned and operated by the permittee, and no power or steam shall be supplied therefrom for any other purpose than the use of the permittee.

(4) The permittee shall not rent the conduit or pipe or any portion thereof. (May 26, 1900, 31 Stat. 217, ch. 587, § 1; 1973 Ed., § 43-1301.)

Cross references. — As to electrical conduits, see Chapter 12 of this title.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1302. Penalty for refusal to remove conduits.

On violation of any of the provisions or restrictions of § 43-1301 the said Mayor shall require the permittee, after 30 days notice, to abandon the use of said conduits or pipes and remove them from the alley or alleys in which they are located, and if said permittee shall neglect or refuse to remove said conduits or pipes and place the surface of the alley in good condition within 60 days after the date of said notice, the said permittee shall be deemed guilty of a misdemeanor, and shall be liable to a fine of \$10 for each and every day that said conduits or pipes are allowed to remain in the alley, or the said alley shall remain out of repair, which fine shall be recovered in the Superior Court of the

District of Columbia, in the name of said District, as other fines and penalties are now recovered in said Court. (May 26, 1900, 31 Stat. 218, ch. 587, § 2; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 43-1302.)

Section references. — This section is referred to in § 43-1303.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1303. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal §§ 43-1301 and 43-1302. (May 26, 1900, 31 Stat. 218, ch. 587, § 3; 1973 Ed., § 43-1303.)

§ 43-1304. Construction of tunnels and structures in Anacostia River.

The Secretary of the Army is authorized to permit the construction and operation of any intake and discharge tunnels and/or other structures in the Anacostia River insofar as they affect navigable waters of the United States; and the Director of National Park Service is authorized, in consideration of the above mentioned quitclaims to the United States, to convey, on behalf of the United States, to the owners of square 667 that portion of square east of 667 lying west of the direct southerly projection of the west line of Half Street as existing on June 15, 1932, north of U Street Southwest; and said Director of National Park Service is authorized to permit the construction and operation of any pipelines and intake and discharge tunnels, upon such terms and conditions as shall be fair and reasonable, under and on any lands owned or claimed by the government of the United States lying in the above area and/or between the east line of Water Street, or other streets, and the Anacostia River. All areas conveyed by the United States to the owners of square 667 shall thereafter be assessed on the books of the Assessor of the District of Columbia the same in all respects as other private properties in the District of Columbia. (June 15, 1932, 47 Stat. 319, ch. 265, § 4; 1973 Ed., § 43-1304.)

References in text. — The title of Secretary of War was changed to Secretary of the Army, by § 205(a) of the Act of July 26, 1947, 61 Stat. 501, ch. 343. Section 205(a) of the Act of July 26, 1947, was repealed by § 53 of the Act of August 10, 1956, 70A Stat. 641, ch. 1041. Sec-

tion 1 of the Act of August 10, 1956, enacted U.S. Code, Title 10, which continued the Department of the Army under the administrative supervision of a Secretary of the Army.

The Director of Public Buildings and Public Parks of the National Capital was changed to

the Director of National Parks, Buildings and Reservations by Executive Order No. 6166, dated June 10, 1933. This in turn was changed to the Director of National Park Service by the Act of March 2, 1934, 48 Stat. 389, ch. 38, § 1.

Office of Assessor abolished. — The Office of the Assessor was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Assessor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, abolished the Office of the Assessor and transferred the functions to the Finance Office in the Department of General Administration. The same Order provided that an Office of the Assessor would be created in the Finance Office. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officers, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) shall continue under the di-

rection and control of the Director of General Administration, and prescribed the functions thereof. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. The Office of Budget and Financial Management was replaced by Organization Order No. 50, dated December 31, 1974, which Order established the Office of Budget and Management Systems. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Resource Development.

CHAPTER 14. TELEGRAPH AND TELEPHONE COMPANIES.

Sec.	Sec.
43-1401. Additional telegraph and telephone wires prohibited on streets; extensions.	Mayor; permits; removal of poles; wires for house connections; telegraph companies.
43-1402. Removal of telephone poles and wires; area of removal; duties of Mayor; extension of conduits.	43-1411. Penalties.
43-1403. Plans of conduits to be submitted to Mayor; permits; removal of poles; wires for house connections; telephone companies.	43-1412. Erection and maintenance of telegraph poles in alleys; poles outside designated limits; temporary permits.
43-1404. Penalties.	43-1413. Conduits in public parks or reservations.
43-1405. Erection and maintenance of telephone poles in alleys; poles outside designated limit; temporary permits.	43-1414. Regulations for inspection; ducts for use of fire and police wires.
43-1406. Regulations for inspection; ducts for use of fire and police wires.	43-1415. Repairs and renewals.
43-1407. Repairs and renewals.	43-1416. Right to alter, amend, or repeal reserved; rights under United States Code preserved.
43-1408. Right to alter, amend, or repeal reserved.	43-1417. Rights to build and lay conduits not compensable in event of condemnation.
43-1409. Removal of telegraph poles and wires; duties of Mayor; extension of conduits.	43-1418. Ban on automated telephone dialing systems for commercial solicitation; definitions; prohibition; exceptions.
43-1410. Plans of conduits to be submitted to	

§ 43-1401. Additional telegraph and telephone wires prohibited on streets; extensions.

The Mayor of the District of Columbia shall not permit or authorize any additional telegraph, telephone, electric lighting or other wires to be erected or maintained on or over any of the streets or avenues of the City of Washington; provided, that the Mayor of the District may, under such reasonable conditions as he may prescribe, authorize the wires of any electric light company existing on July 18, 1888, and then operating in the District of Columbia, to be laid under any street, alley, highway, footway or sidewalk in the District, whenever in his judgment the public interest may require the exercise of such authority, such privileges as may be granted hereunder to be revocable at the will of Congress without compensation and no such authority to be exercised after the termination of the 50th Congress. (July 18, 1888, 25 Stat. 323, ch. 676, § 1; 1973 Ed., § 43-1401.)

Cross references. — As to rules and regulations for protection of life, health, and property, see § 1-319.

As to jurisdiction and control over public ways, see § 7-102.

As to electrical wiring, see Chapter 12 of this title.

As to rules and regulations for construction of conduits, see §§ 43-1406 and 43-1414.

As to conduits in public parks and reservations, see § 43-1413.

Section references. — This section is referred to in § 43-1202.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *C & P Tel. Co. v. Manning*, 186 U.S. 238, 22 S. Ct. 881, 46 L. Ed. 1144 (1902).

§ 43-1402. Removal of telephone poles and wires; area of removal; duties of Mayor; extension of conduits.

All telephone poles and wires attached thereto not the property of the United States or the District of Columbia existing June 20, 1902, upon the streets and avenues within the section of the District of Columbia bounded by a line beginning at 2nd and B Streets Southeast and running thence along B Street south, 3rd Street west, Missouri Avenue, 6th Street west, B Street north, 23rd Street west, Rock Creek, Cincinnati Street, Columbia Road, 16th Street west (extended), Park Street, Whitney Avenue, 11th Street west, R Street north, New Jersey Avenue, C Street north, and 2nd Street east to the point of beginning, except as hereinafter provided, shall from time to time, as may be prescribed by the Mayor of said District, be taken down and removed. The work of taking down and removing said poles and wires shall be done under the direction of said Mayor, and it is hereby made the duty of said Mayor to enforce compliance with the provisions of §§ 43-1402 to 43-1408, inclusive, as expeditiously as may be consistent with the public interests; and the said Mayor is hereby empowered from time to time to authorize any individual, company, or corporation operating on June 20, 1902, and maintaining a telephone plant or system, partly overhead and partly underground, in the District of Columbia, to extend and enlarge its system of underground conduits, subsidiaries, and manholes in or under any or all of the streets, avenues, alleys, lanes, or other public highways in said city and District as may be requisite and necessary for the purposes of §§ 43-1402 to 43-1408, inclusive, and for the reception of such other cables and wires as may be reasonably required in the future by the growth of such individual, company, or corporation or to adequately meet the requirements of the public for telephone service. (June 20, 1902, 32 Stat. 393, ch. 1136, § 1; 1973 Ed., § 43-1402.)

Section references. — This section is referred to in sections 43-1403 to 43-1408.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *C & P Tel. Co. v. Manning*, 186 U.S. 238, 22 S. Ct. 881, 46 L. Ed. 1144 (1902).

§ 43-1403. Plans of conduits to be submitted to Mayor; permits; removal of poles; wires for house connections; telephone companies.

From time to time any individual, company, or corporation, maintaining and operating on June 20, 1902, a telephone plant or system in said District, partly overhead and partly underground, shall prepare and submit to the said Mayor a plan or plans, or application or applications, in writing, showing the streets, avenues, alleys, lanes, and other public highways in or under which it is proposed to construct conduits, subsidiaries, or manholes, and giving the general dimensions, length, and course thereof, and before any such conduit, subsidiary, or manhole is constructed it shall be necessary to obtain the approval and permission of said Mayor. Said Mayor is empowered to require that all proposed conduits, subsidiaries, and manholes shall be constructed in accordance with the approved plan or permit; and upon the approval by said Mayor of any such plan, or the issuing of any such permit, providing for the construction of underground conduits, subsidiaries, or manholes within the section in said District described in § 43-1402 the construction therein provided for shall be proceeded with diligently, and upon the completion thereof, or as soon thereafter as may be, without impairing the efficiency of the telephone service in said District, the individual, company, or corporation constructing such conduits, subsidiaries, or manholes shall place its cables and wires therein and take down and remove from the streets and avenues in which such conduits are constructed all poles and wires except such as said Mayor may, in accordance with the provisions of §§ 43-1402 to 43-1408, inclusive, permit to remain for the purpose of distributing wires for house connections. (June 20, 1902, 32 Stat. 393, ch. 1136, § 2; 1973 Ed., § 43-1403.)

Section references. — This section is referred to in §§ 43-1402, 43-1404, 43-1405, 43-1406 and 43-1408.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1404. Penalties.

Any individual, company, or corporation owning and maintaining such poles and wires attached thereto on or over any street or avenue within the section of the District described in § 43-1402 who shall willfully neglect or refuse to remove the same, as provided in § 43-1403, shall be liable to a penalty of not more than \$25 for each and every day during which such failure to remove said poles and wires shall continue, which amount may be recovered by the District

of Columbia in any court of competent jurisdiction. (June 20, 1902, 32 Stat. 394, ch. 1136, § 3; 1973 Ed., § 43-1404.)

Section references. — This section is referred to in § 43-1403.

§ 43-1405. Erection and maintenance of telephone poles in alleys; poles outside designated limit; temporary permits.

Said Mayor is empowered to authorize the erection and maintenance of poles in the alleys of said city and District and the stringing thereon of telephone conductors from alley poles or housetop fixtures in one square to alley poles or housetop fixtures in another square for the purpose of enabling house connections to be made, and also to authorize the erection of telephone poles in the District of Columbia outside the limits of the section of said District described in § 43-1402 and the stringing thereon of telephone conductors for house connections or for connection with lines outside the District of Columbia; also to authorize the erection of such poles and the stringing thereon of such wires in the streets and avenues of said city and District in the parts thereof in which there are no public alleys, and in such other places as the public interests do not require that the lines be placed underground, or in places where it shall be deemed by said Mayor impracticable to advantageously place or operate such lines underground. During the progress of the work provided for in § 43-1402 said Mayor is also empowered to issue temporary permits for the erection and maintenance of poles and overhead conductors in places where the lines are ultimately to be placed underground, but where the work can not be immediately done because of the greater urgency of work in other localities, or for other reasons satisfactory to said Mayor; but in issuing such temporary permits said Mayor shall bear in mind the purpose and policy of §§ 43-1402 to 43-1408, inclusive, which is to cause to be removed from the streets and avenues within the section of said District described in § 43-1402 all poles and wires attached thereto, except as hereinbefore provided, as expeditiously as may be without interfering with or impairing the efficiency of the telephone service in said District and without denying to the public reasonable telephone facilities at all times. (June 20, 1902, 32 Stat. 394, ch. 1136, § 4; 1973 Ed., § 43-1405.)

Section references. — This section is referred to in §§ 43-1403, 43-1406 and 43-1408.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1406. Regulations for inspection; ducts for use of fire and police wires.

All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of §§ 43-1402 to 43-1408, inclusive, shall be subject to such reasonable regulations as the Council of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires; provided, that in all conduits so constructed such space shall be furnished to the District of Columbia as may be necessary for its fire alarm or police patrol wires or cables, carrying low potential currents of electricity, free of charge: And provided further, that the number of ducts so reserved in any 1 conduit shall not be more than 3. (June 20, 1902, 32 Stat. 395, ch. 1136, § 5; 1973 Ed., § 43-1406.)

Section references. — This section is referred to in §§ 43-1402, 43-1403, 43-1405 and 43-1408.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(321) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1407. Repairs and renewals.

The said Mayor is empowered to authorize any such individual, company, or corporation owning and operating on June 20, 1902, any lines of street poles and wires and any alley poles or alley-pole line within the District of Columbia and outside of the section described in § 43-1402 to continue to maintain the same, with such repairs and renewals as may be necessary to keep them in good order and condition of repair, and to add thereto such poles and wires as may be necessary for the purpose of making house connections or for connecting with telephone lines outside the District of Columbia. (June 20, 1902, 32 Stat. 395, ch. 1136, § 6; 1973 Ed., § 43-1407.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1408. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal §§ 43-1402 to 43-1408, inclusive. (June 20, 1902, 32 Stat. 395, ch. 1136, § 7; 1973 Ed., § 43-1408.)

Section references. — This section is referred to in §§ 43-1402, 43-1403, 43-1405 and 42-1406.

§ 43-1409. Removal of telegraph poles and wires; duties of Mayor; extension of conduits.

All telegraph poles and the wires attached thereto, not the property of the United States or the District of Columbia, upon the streets, avenues and alleys on March 3, 1905 within the fire limits of the District of Columbia, except as hereinafter provided, shall from time to time, as may be prescribed by the Mayor of said District, be taken down and removed. The work of taking down and removing said poles and wires shall be done under the direction of said Mayor, and it is hereby made the duty of said Mayor to enforce compliance with the provisions of §§ 43-1409 to 43-1417, inclusive, as expeditiously as may be consistent with the public interests; and the said Mayor is hereby empowered, from time to time, to authorize any company or corporation on March 3, 1905, or thereafter operating and maintaining a telegraph plant or system in the District of Columbia to locate and construct a system of underground conduits, subsidiaries, and manholes in or under any or all of the streets, avenues, alleys, lanes, or other public highways in said District, as may be requisite and necessary for the purpose of §§ 43-1409 to 43-1417, inclusive, and for the reception of such other conduits, cables, and wires as may be reasonably required in the future by the growth of such company or corporation or its assigns, or to adequately meet the requirements of the public for telegraph service. (Mar. 3, 1905, 33 Stat. 984, ch. 1415, § 1; 1973 Ed., § 43-1409.)

Section references. — This section is referred to in §§ 43-1410, 43-1411, 43-1412 and 43-1414 to 43-1417.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1410. Plans of conduits to be submitted to Mayor; permits; removal of poles; wires for house connections; telegraph companies.

From time to time, any company or corporation, or its assigns, on March 3, 1905, or thereafter maintaining and operating a telegraph plant or system in

said District, shall prepare and submit to the said Mayor a plan or plans or application or applications, in writing, showing the streets, avenues, alleys, lanes, and other public highways in or under which it is proposed to construct conduits, subsidiaries, or manholes, and giving the general dimensions, length, and course thereof; and before any such conduit, subsidiary, or manhole is constructed it shall be necessary to obtain the approval and permission of said Mayor. Said Mayor is empowered to require that all proposed conduits, subsidiaries, and manholes shall be constructed in accordance with the approved plan or permit; and upon the approval by said Mayor of any such plan, or the issuing of any such permit, providing for the construction of underground conduits, subsidiaries, or manholes within the said limits described in § 43-1409, or in such part thereof as said Mayor shall require and direct, the construction therein provided for shall be proceeded with diligently, and upon the completion thereof, or as soon thereafter as may be without impairing the efficiency of the telegraph service in said District, the company or corporation constructing such conduits, subsidiaries, or manholes shall place its cables and wires therein and take down and remove from the streets and avenues in which such conduits are constructed all poles and the wires thereon, except such as said Mayor may, in accordance with the provisions of §§ 43-1409 to 43-1417, inclusive, permit to remain for the purpose of distributing wires for house or other connections. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 2; 1973 Ed., § 43-1410.)

Section references. — This section is referred to in §§ 43-1409, 43-1412, 43-1414, 43-1416 and 43-1417.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1411. Penalties.

Any company or corporation now or hereafter owning and maintaining such poles and wires attached thereto on or over any street or avenue within the said limits described in § 43-1409, which shall willfully neglect or refuse to remove the same, as provided in § 43-1409, shall be liable to a penalty of not more than \$25 for each and every day during which such failure to remove said poles and wires shall continue, which amount may be recovered by the District of Columbia in any court of competent jurisdiction. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 3; 1973 Ed., § 43-1411.)

Section references. — This section is referred to in § 43-1409.

§ 43-1412. Erection and maintenance of telegraph poles in alleys; poles outside designated limits; temporary permits.

Said Mayor is empowered to authorize the erection and maintenance of poles in the alleys of said District, and the stringing thereon of wires or conductors for telegraph purposes from alley poles or housetop fixtures in one square to alley poles or housetop fixtures in another square for the purpose of enabling house connections to be made, and to authorize the erection of poles and the stringing thereon of wires on and upon the streets and avenues of said District in the parts thereof in which there are no public alleys and in such places as the public interest do not require that the lines be placed underground, or in places where it shall be deemed by said Mayor impracticable to advantageously place or operate such lines underground. During the progress of the work provided for in § 43-1409 said Mayor is also empowered to issue temporary permits for the erection and maintenance of poles and overhead conductors in places where the lines are ultimately to be placed underground, where the work cannot be immediately done because of the greater urgency of work in other localities, or for other reasons satisfactory to said Mayor; but in issuing such temporary permits said Mayor shall bear in mind the purpose and policy of §§ 43-1409 to 43-1417, inclusive, which is to cause to be removed from the streets and avenues within the said limits described in § 43-1409 all poles and wires attached thereto, except as hereinbefore provided, as expeditiously as may be without interfering with or impairing the efficiency of the telegraph service in said District and without denying to the public reasonable telegraph facilities. (Mar. 3, 1905, 33 Stat. 985, ch. 1415, § 4; 1973 Ed., § 43-1412.)

Section references. — This section is referred to in §§ 43-1409, 43-1410, 43-1414, 43-1416 and 43-1417.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1413. Conduits in public parks or reservations.

Any officer of the United States government charged with the care, maintenance, and supervision of any public park or reservation may grant permission to any company or corporation maintaining and operating a telegraph plant or system in said District on March 3, 1905, or thereafter, upon application being made therefor, to construct conduits, subsidiaries, or manholes in said park or reservation, under such reasonable regulations as said officer may prescribe, unless, in the judgment of said officer, said construction will result in injury to

the United States or its properties. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 4a; 1973 Ed., § 43-1413.)

§ 43-1414. Regulations for inspection; ducts for use of fire and police wires.

All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of §§ 43-1409 to 43-1417, inclusive, shall be subject to such reasonable regulations as the Council of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires; provided, that in all underground conduits so constructed such space shall be furnished to the said District of Columbia and the United States as may be necessary for their telegraph, fire alarm, and police patrol wires or cables carrying low potential currents of electricity, free of charge; and provided further, that the number of ducts so reserved in any one conduit shall not be more than 2. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 5; 1973 Ed., § 43-1414.)

Section references. — This section is referred to in §§ 43-1409, 43-1410, 43-1412, 43-1416 and 43-1417.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(322) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1415. Repairs and renewals.

The said Mayor is empowered to authorize any such company or corporation owning and operating lines of street poles and wires on March 3, 1905, or thereafter and any alley poles or alley-pole line or housetop wires within the said District and outside of the limits described in § 43-1409 to continue to maintain the same, with such repairs and renewals as may be necessary to keep them in good order and condition of repair, and to add thereto such poles and wires as may be necessary for their telegraphic purposes. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 6; 1973 Ed., § 43-1415.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1416. Right to alter, amend, or repeal reserved; rights under United States Code preserved.

Congress reserves the right to alter, amend, or repeal §§ 43-1409 to 43-1417, inclusive, but nothing herein shall abridge or lessen the rights granted telegraph companies under Title 65, § 5263 and the following, United States Revised Statutes of the Code of the Laws of the United States of America. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 7; 1973 Ed., § 43-1416.)

Section references. — This section is referred to in §§ 43-1409, 43-1410, 43-1412, 43-1414 and 43-1417.

5269, inclusive, of the Revised Statutes, referred to in this section, were repealed by the Act of July 16, 1947, 61 Stat. 327, ch. 256, § 1.

References in text. — Sections 5263 to

§ 43-1417. Rights to build and lay conduits not compensable in event of condemnation.

If at any time the District of Columbia or the national government shall acquire, by purchase, condemnation proceedings, or otherwise, the property of any telegraph company in the District of Columbia, nothing shall then be paid for the rights accorded under §§ 43-1409 to 43-1416, inclusive, to build and lay such conduits. (Mar. 3, 1905, 33 Stat. 986, ch. 1415, § 8; 1973 Ed., § 43-1417.)

Section references. — This section is referred to in §§ 43-1409, 43-1410, 43-1412, 43-1414 and 43-1416.

§ 43-1418. Ban on automated telephone dialing systems for commercial solicitation; definitions; prohibition; exceptions.

(a) For the purposes of this section, the term:

(1) "Automated dialing or push-button or tone-activated address signaling telephone system with a prerecorded message" is any equipment used for telephone solicitation purposes, which alone or in conjunction with other equipment, can convey a prerecorded or synthesized voice message to the number called.

(2) "Soliciting" means any attempt to sell or lease consumer goods, services, or real property to another person.

(b)(1) A person may not use an automated dialing, push-button, or tone-activated address signaling telephone system with a prerecorded message for the sole purpose of:

(A) Soliciting a person over the telephone to purchase or lease goods, services, or real property; or

(B) Requesting survey information over the telephone where results are to be used directly for the purpose of soliciting a person to purchase or lease goods, services, or real property.

(2) This section shall not apply if:

(A) The person soliciting is a federal, state, or local government agency that uses an automated dialing prerecorded message for emergency purposes; or

(B) A person has a preexisting business relationship with the party called and the call concerns goods, services, or real property that have been previously ordered or purchased.

(3) Any automated, push-button, or tone-activated address signaling telephone system used in the District must automatically create a disconnect signal or on hook condition which allows the called party's line to be released within 10 seconds after the called party hangs up.

(4) Any person who violates this section shall be fined a civil penalty of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation.

(5) The Corporation Counsel of the District of Columbia, or his assistants, shall prosecute violations of this section in the name of the District of Columbia. (July 13, 1991, D.C. Law 9-14, §§ 2, 3, 38 DCR 3384.)

Legislative history of Law 9-14. — Law 9-14, the "Ban on Automated Telephone Dialing Systems for Commercial Solicitation Act of 1991," was introduced in Council and assigned Bill No. 9-49, which was referred to the Committee on Public Services. The Bill was adopted

on first and second readings on April 9, 1991, and May 7, 1991, respectively. Signed by the Mayor on May 17, 1991, it was assigned Act No. 9-34 and transmitted to both Houses of Congress for its review.

CHAPTER 14A. TELECOMMUNICATIONS COMPETITION.

Sec.	Sec.
43-1451. Definitions.	43-1455. Access to buildings.
43-1452. Regulation of local exchange carriers.	43-1456. Exemptions.
43-1453. Universal Service Trust Fund.	43-1457. Taxation of local exchange providers.
43-1453.1. Cases in process.	43-1458. Implementation policy.
43-1454. Access to public ways.	

§ 43-1451. Definitions.

For the purposes of this chapter, the term:

- (1) "Bell Operating Company" ("BOC") means Bell Atlantic Company.
- (2) "Cable" means coaxial cable, copper wire, fiber optic telecommunications cable, or other tangible linear transmission medium that may be used in lieu of any of the foregoing for the same purpose.
- (3) "Competitive service" means any telecommunications service which satisfies the criterion in paragraph (3)(A) or (C) of this section individually, or the criteria in paragraph (3)(B) or (D) of this section in combination with any other criterion as follows:
 - (A) Consumer premises equipment or some other technological medium or transmission service provides functionally equivalent service and is currently and generally available in the District of Columbia from at least one supplier other than the incumbent local exchange carrier at competitive price levels;
 - (B) The service is nonessential, but any bottleneck service whose use is required by either a customer or provider of a competing service is presumed to be essential;
 - (C) The service has a high own-price elasticity of demand; and
 - (D) The market in which the service is offered has an HHI of below 1800 based on a showing provided by the incumbent local exchange carrier supported by an analysis of the sensitivity of its calculated HHI values to the scope of the defined geographic and product markets.
- (4) "Competitive telecommunications service provider" means any provider of telecommunications service that was not an incumbent local exchange carrier on January 31, 1996.
- (5) "Conduit" means any pipe or other hollow protective sleeve through which cable may be inserted.
- (6) "Dialing parity" means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers, including the local exchange carrier.
- (7) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that provided telephone exchange service in such area on the date of enactment of the federal Telecommunications Act of 1996 (P.L. 104-104).
- (8) "Local exchange carrier" ("LEC") means any person that is engaged in the provision of telephone exchange service or exchange access. The term "local

exchange carrier” does not include a person insofar as the person is engaged in the provision of a commercial mobile service.

(9) “Local exchange service” means a telecommunications service provided within an exchange area.

(10) “Market power” means the ability to raise and hold prices at levels that are above or below those which would be charged in a fully competitive environment.

(11) “Network element” means the facility or equipment used in the provision of a telecommunications service. The term “network element” also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and the information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(12) “Number portability” means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

(13) “People’s Counsel” (“OPC”) means the Office of People’s Counsel as established pursuant to § 43-406.

(14) “Public Service Commission” (“Commission” or “PSC”) means the Public Service Commission of the District of Columbia established pursuant to § 43-401.

(15) “Public way” means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, including public utility easements or rights of way, poles, ducts, conduits, and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the District, which may be utilized for the purpose of installing and maintaining the telecommunications system of a telecommunications service provider within the District, such use being on nondiscriminatory terms and conditions.

(16) “Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

(17) “Telecommunications carrier” means any provider of telecommunications services, except that the term does not include aggregators of telecommunications services as defined in § 226 of the Communications Act of 1934 (47 U.S.C. § 226). A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services and is a service that the United States Federal Communications Commission determines shall be treated as common carriage.

(18) “Telecommunications equipment” means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services and includes software integral to such equipment, including upgrades.

(19) “Telecommunications industry” means communications businesses using regulated or unregulated facilities or services and includes broadcasting, telecommunications, cable, computer, data transmission, software, programming, advanced messaging, and electronics.

(20) "Telecommunications service" means the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available to the public, regardless of the facilities used.

(21) "Telecommunications system" means the portion of a telecommunications network which has been or is to be constructed, operated, and maintained within the public ways by a provider of telecommunications services within the District, including, without limitation, all conduits, cables, manholes, handholes, splice boxes, ancillary hardware, poles, and supporting wires and anchors.

(22) "Universal service" means that evolving array of services which the Public Service Commission, taking into account advances in telecommunications and information technologies and services and pursuant to any rules promulgated by the United States Federal Communications Commission, determines should be provided at just, reasonable, and affordable rates to all District residents, including the indigent and those with disabilities, to enable them to participate effectively in the economic, academic, medical, and democratic processes of the District. In circumstances defined by the Public Service Commission, certain low-income or disabled persons shall be assisted to receive those services determined to be universal services through a fund into which all local exchange carriers will be required to contribute in such amounts as the Public Service Commission shall determine. (Sept. 9, 1996, D.C. Law 11-154, § 2, 43 DCR 3736.)

Legislative history of Law 11-154. — Law 11-154, the "Telecommunications Competition Act of 1996," was introduced in Council and assigned Bill No. 11-258, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 21, 1996, and June 4, 1996, respectively. Signed by the Mayor on

June 25, 1996, it was assigned Act No. 11-300 and transmitted to Congress for its review. D.C. Law 11-154 became effective September 9, 1996.

References in text. — The federal Telecommunications Act of 1996, Pub. L. 104-104, referred to in (7), is codified throughout Title 47 of the United States Code.

§ 43-1452. Regulation of local exchange carriers.

(a) The Public Service Commission may, upon petition by the incumbent local exchange carrier and pursuant to procedures developed by the PSC, reclassify any telecommunications service offered by the incumbent local exchange carrier.

(b) Pursuant to the federal Telecommunications Act of 1996 (Public Law 104-104), the Public Service Commission shall establish a procedure to facilitate entry into the District for providers of all forms of telecommunications service in order to foster the availability of competitive telecommunications options to consumers in the District, and to encourage the development of a technological infrastructure which will afford District residents increased access to the information highway.

(c) The procedure established by the Public Service Commission shall provide that local exchange carriers will be regulated according to each LEC's respective market power in the local exchange market, and in such manner as to prohibit abuse of monopoly power and facilitate adjustments in pricing as developing competition dictates a need for market flexibility.

(d)(1) The Public Service Commission, in lieu of requiring a certificate of public convenience and necessity, shall grant any telecommunications service provider seeking to provide services within the District the authority to do so within 15 days of an applicant's filing with the Commission of a Statement of Business Operations, as described in subsection (e) of this section, and the payment of an application fee of \$1000. The provider shall be exempt from any other certification requirements if the applicant demonstrates in its Statement of Business Operations that it or its affiliates have at least 3 years experience providing telecommunications services pursuant to authorizations by the FCC or a state regulatory body and that it or its affiliates derives over \$50 million in gross annual revenues from telecommunications services.

(2) Any telecommunications service provider possessing a certificate of convenience and public necessity to operate within the District of Columbia as of September 9, 1996 is exempted from the requirements in paragraph (1) of this subsection.

(3) For applicants other than those meeting the criteria set forth in paragraph (1) of this subsection, subsequent to the applicant's filing of the Statement of Business Operations as described in subsection (e) of this section, and the payment of an application fee of \$1000, the Commission may request additional information to determine whether the applicant has sufficient experience and financial stability to ensure the continued provision of local exchange services within the District. For such applicants, the Commission may waive the minimum experience and gross annual revenue requirements if it can determine that certification is in the public interest and that the applicant has sufficient experience and financial stability to ensure the continued provision of local exchange services within the District.

(A) If the PSC requests additional information from the applicant, such request must be provided in writing within 15 days of the applicant's filing.

(B) The applicant shall be afforded 15 days to provide the additional information requested by the PSC.

(C) Upon receipt of the additional information from the applicant, the PSC must determine within 15 days whether the additional information satisfies the PSC in respect to the applicant's ability to ensure continued provision of telecommunication services to District consumers.

(D) If the PSC determines that the additional information provides the necessary assurances, the PSC shall authorize the applicant to provide services within the District of Columbia; if the Commission determines that the applicant has not demonstrated sufficient experience and financing, the applicant shall be provided written notice of the deficiency.

(e) The Statement of Business Operations required by this section shall contain, at a minimum, the following information of each telecommunications service provider:

- (1) Name, address, and telephone number of corporate contact;
- (2) Name, address, and telephone number of a registered agent in the District of Columbia;
- (3) Telephone number for customer service;
- (4) Name, address, and telephone number of a regulatory contact person;

- (5) A copy of the provider's articles of incorporation;
- (6) A signed tax attestation form;
- (7) A brief description of the type of service to be offered;
- (8) Financial statements for the last 3 years from the applicant or its affiliate; and

(9) Any other information the Public Service Commission may require.

(f) All local exchange carriers authorized by the PSC to provide service within the District must file and maintain tariffs with the Public Service Commission for each service offered within the District. The tariffs shall describe the service being offered, list all terms and conditions, and specify the rate or rates charged for the service.

(g) Tariffs of competitive telecommunications service providers shall not be regulated or otherwise reviewed by the Public Service Commission, except as otherwise specified in subsection (h) of this section, for interconnection, and in § 43-1453 for Universal Service Trust Fund subsidies. Tariffs filed by competitive telecommunications providers shall be deemed just and reasonable. Notwithstanding any other provision of law to the contrary, the Public Service Commission shall not regulate, fix, or prescribe the tolls, charges, rate structure, terms and conditions of service, rate base, rate of return, operating margin, earnings, cost of service, or the issuance of debt, equity, or other securities of any competitive telecommunications service provider, except that nothing in this chapter shall limit the authority of the PSC to establish service quality standards for such telecommunications service providers, to regulate terms and conditions of service (but not including rates, charges, and rate structure) to protect the public safety and welfare, provide for continued quality of telecommunications service, and safeguard the rights of consumers.

(h) All local exchange carriers in the District are required to unbundle network elements to the extent that federal law requires, and to interconnect networks and exchange local exchange service calls under terms that are reasonable and efficient.

(1) All LECs shall reciprocally terminate each other's local exchange service calls and shall financially compensate each other for this service if the PSC determines that a traffic imbalance exists. As between any two LECs, if at any time after implementation of local number portability pursuant to this chapter the traffic terminated by one provider, on a quarterly basis, is at least 5 % greater than the traffic terminated by the other provider, the two affected LECs shall mutually negotiate an agreement regarding the charges, terms, and conditions for the termination of local exchange service calls that originate on their respective networks.

(2) Any agreement adopted pursuant to this subsection shall be submitted for approval to the PSC. The PSC shall approve or reject the agreement, with written findings as to any deficiencies. If the PSC does not act to approve or reject the agreement within 90 days after submission by the LECs, the agreement shall be deemed approved. The PSC shall make a copy of each agreement approved pursuant to this subsection available for public inspection and copying within 10 days after the agreement is approved.

(3) If an agreement between the 2 affected providers has not been finalized within 90 days from the date one provider notifies the other provider

of the traffic exchange imbalance, then either provider may petition the PSC to fix charges set at the economic costs, and the terms and conditions for the continued termination of local exchange service calls. The PSC shall resolve each issue set forth in the petition and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which one LEC received notification of the traffic imbalance.

(4) The incumbent local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved pursuant to this subsection to any other requesting LEC upon the same terms and conditions as those provided in the agreement.

(i) Regulation of the Bell Operating Company:

(1) Existing and proposed tariffs of the BOC must:

(A) Contain rates that are just and reasonable; and

(B) Ensure that the BOC does not unjustly discriminate in favor of itself or any other telecommunications provider in the provision of any telecommunications service or network element.

(2) The Public Service Commission may, pursuant to the Commission's existing procedures, suspend and reject any proposed or existing tariffs of the BOC if it fails to meet the requirements of paragraph (1) of this subsection.

(3) The BOC shall unbundle each network element and shall make those network elements available under nondiscriminatory terms and conditions filed with the PSC, including cost-based prices that are identical to those used in the provision of its own services and the services provided by its affiliates.

(4) The rate that the BOC charges for any service shall not be less than the sum of rates charged to others for any network elements unbundled pursuant to paragraph (3) of this subsection which are also used by the BOC to provide that service, and any other costs incurred by the BOC to provide that service.

(5) The incumbent LEC shall offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to noncarriers. The incumbent LEC shall not prohibit nor impose unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service, except that the Public Service Commission may prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(6) The BOC shall afford to any competitive telecommunications service provider offering, or seeking to offer, a telecommunications service reasonable and nondiscriminatory access to poles, ducts, conduits, and rights-of-way integral to the efficient transmission, routing, or other provision of local exchange service or exchange access; and the PSC shall determine the criteria for ensuring that such access shall be equal in type and quality to the access which the BOC affords to itself or to any other person, and that such access is made available by the BOC on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

(j) The BOC may petition the Public Service Commission for an alternative form of regulation, or for forbearance of regulation. The Public Service

Commission shall approve or disapprove a plan for alternative regulation or for forbearance within 270 days of the BOC filing its petition, after notice and a public hearing, provided it finds that:

(1) The plan is in the public interest;

(2) The BOC has filed and received approval for a tariff for each network element; provided, that nothing in this subsection shall prohibit the Public Service Commission from implementing any settlement arrived at in respect to a formal case in process, or any future case, so long as such settlement establishes tariffs that are not inconsistent with the requirements of the federal Telecommunications Act;

(3) The plan will produce fair, just, and reasonable rates for telecommunications services in the District based upon the Commission determination that existing rates at the time the plan is approved are fair, just, and reasonable;

(4) The plan accounts for changes in technology and the structure of the telecommunications industry that are occurring;

(5) The plan specifies how customers will benefit from any efficiency gains, cost savings arising out of the regulatory change, and improvements in productivity as a result of technological change;

(6) The plan will maintain the quality and availability of telecommunications services;

(7) The plan contains adequate safeguards to ensure that the BOC does not discriminate in favor of any telecommunications provider, including itself, in the provision and pricing of any telecommunications service;

(8) The plan contains adequate safeguards to ensure that no service is receiving a subsidy, unless such a subsidy is necessary to maintain basic residential local exchange service for eligible customers pursuant to this section; and

(9) The plan does not unreasonably prejudice or disadvantage any customer class or provider of competitive services.

(k) Within 30 days of September 9, 1996, and pursuant to the authority given to State Commissions under the federal Telecommunications Act of 1996, the Public Service Commission shall initiate a proceeding to address and resolve the issues associated with competition in the local exchange, including, but not limited to:

(1) Local number portability;

(2) Unbundling;

(3) Universal service;

(4) Wholesale rates for the resale of BOC services;

(5) Numbering resources and local dialing parity;

(6) Collocation of network equipment;

(7) Directory listings and directory assistance;

(8) Service quality standards;

(9) Incentives to facilitate the involvement in the telecommunications industry in the District of Columbia of small and disadvantaged businesses, including telecommunications service providers with gross annual revenues of less than \$50 million; and in addressing the issue of incentives to assist small

and disadvantaged businesses, the PSC shall monitor the Federal Communications Commission implementation of § 257 of the federal Telecommunications Act of 1996 to follow the development of strategies which may be useful to the District of Columbia; examine ways to facilitate access for eligible District of Columbia businesses to the capital and programs of the Telecommunications Development Fund established by § 714 of the federal Telecommunications Act of 1996; and require, to the extent permissible under the federal Telecommunications Competition Act of 1996, that telecommunications providers authorized to operate in the District of Columbia agree to provide, in the manner that the existing monopoly utilities historically have agreed to provide them, contracting opportunities for small and disadvantaged businesses and employment and training programs for District residents;

(10) Strategies necessary to implement the mandate to state commissions contained in § 706 of the federal Telecommunications Act of 1996 to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans, including, in particular, elementary and secondary schools and classrooms, and methods of facilitating access for eligible District of Columbia institutions to the funding and assistance available from the National Education Technology Funding Corporation, as well as the development of incentives for telecommunications providers authorized to operate in the District of Columbia to invest appropriate resources in the National Education Technology Funding Corporation;

(11) The application of quality service standards; and

(12) Any other issues the Commission may determine to be necessary.

(l) A Public Service Commission order, including appropriate findings of fact and conclusions of law, resulting from the proceeding required pursuant to subsection (k) of this section shall be issued no later than 12 months subsequent to the initiation of that proceeding.

(m) Notwithstanding any other provisions of law, the Public Service Commission shall expend no more than \$100,000, and the Office of the People's Counsel shall expend no more than \$50,000 for the proceeding required by subsection (k) of this section unless either of those agencies presents to the Council of the District of Columbia a written determination that funds in excess of these amounts will be required to carry out the provisions of subsections (k) and (l) of this section along with a resolution requesting authorization to expend a specific additional amount, and that resolution shall be deemed approved if not disapproved by the Council within a 30-day period of review.

(n) Within 12 months of September 9, 1996, or upon a finding of the PSC, whichever is earlier, the Public Service Commission shall promulgate rules in respect to the notice requirements for abandonment of any service, and delineate the responsibilities, if any, incumbent upon the telecommunications service provider consequent to service abandonment. (Sept. 9, 1996, D.C. Law 11-154, § 3, 43 DCR 3736; September 9, 1996, D.C. Law 11-155, § 25(a), 43 DCR 4213.)

Section references. — This section is referred to in § 43-1458.

Effect of amendments. — D.C. Law 11-155 substituted “to regulate terms and conditions of service (but not including rates, charges, and rate structure) to protect the public safety and welfare, provide for continued quality of telecommunications service, and safeguard the rights of consumers” for “to enforce the consumer protection provisions in 15 DCMR Chapter 3, and to address a complaint alleging that action by a local exchange provider unreasonably precludes a customer from changing to another local exchange carrier” in (g).

Legislative history of Law 11-154. — See note to § 43-1451.

Legislative history of Law 11-155. — Law 11-155, the “Mortgage Lender and Broker Act of 1996,” was introduced in Council and assigned Bill No. 11-637, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 19, 1996, it was assigned Act No. 11-309 and transmitted to both Houses of Congress for its review. D.C. Law 11-155 became effective on September 9, 1996.

References in text. — The federal Telecommunications Act of 1996, Pub. L. 104-104, referred to in (b) and (k), is codified throughout Title 47 of the United States Code.

§ 43-1453. Universal Service Trust Fund.

(a) The Public Service Commission shall establish a Universal Service Trust Fund, and determine those services which shall constitute universal service in the District of Columbia, the costs of providing universal service, and the amount of subsidy needed to maintain the Universal Service Trust Fund. Any subsidy necessary to support universal service shall be separately funded out of the Universal Service Trust Fund, and administered by a Universal Service Trust Fund administrator named by the Public Service Commission.

(b) Upon an annual determination by the Public Service Commission of the amount needed to support a universal service subsidy, the PSC shall bill and collect from all local exchange carriers operating in the District at any time during the previous year an amount representing each carrier’s share of the total universal service subsidy. The determination of each LEC’s share shall be in proportion to each carrier’s total revenues for local exchange services provided in the District during the previous year.

(c) There shall be no fiscal year limitation on the funds in the Universal Service Trust Fund, and any funds unspent in one fiscal year may be used to offset the amounts required to be contributed by local exchange carriers to the fund in the next fiscal year.

(d) The universal service subsidy derived from the Universal Service Trust Fund shall be available for eligible customers regardless of the local exchange carrier which the eligible customers choose to use. (Sept. 9, 1996, D.C. Law 11-154, § 4, 43 DCR 3736.)

Section references. — This section is referred to in § 43-1452.

Legislative history of Law 11-154. — See note to § 43-1451.

§ 43-1453.1. Cases in process.

Nothing in this chapter shall prevent the PSC from proceeding with respect to a formal case in process before the Commission so long as it is not inconsistent with the requirements of the federal Telecommunications Act of 1996. (Sept. 9, 1996, D.C. Law 11-154, § 4a., as added Sept. 9, 1996, D.C. Law 11-155, § 25(b), 43 DCR 4213.)

Effect of amendments. — D.C. Law 11-155 added this section.

Legislative history of Law 11-155. — See note to § 43-1452.

References in text. — The federal Telecommunications Act of 1996, referred to in this section, is Pub. L. 104-104, which is codified throughout Title 47 of the United States Code.

§ 43-1454. Access to public ways.

(a) Any telecommunications provider in the District shall have the right to utilize the public right-of-ways of the District for installation, maintenance, repair, replacement, and operation of its telecommunications system on terms and conditions that are competitively neutral; provided, that nothing in this chapter shall affect the authority of the District government to manage its public ways or to require fair and reasonable compensation from the telecommunications service providers, on a nondiscriminatory basis. Any compensation the District government may require pursuant to this subsection shall be in addition to all other payments, fees, or collections required by this chapter. The Mayor shall promulgate rules to carry out the purposes of this subsection.

(b) Prior to constructing each portion of its telecommunications system located within the public ways, a telecommunications service provider shall obtain all necessary construction permits and licenses from the appropriate agency. All such construction shall be performed in compliance with applicable codes and regulations, and all facilities so constructed shall be maintained in compliance with applicable codes and regulations.

(c) The Mayor shall issue rules to establish and regulate the process through which any alteration or damage to public rights of way in the District of Columbia shall be compensated by the telecommunications service provider whose construction or repair work has altered or damaged public rights of way. The rules shall require the telecommunications service provider to repair any alteration or damage pursuant to specifications and inspection by the District of Columbia Department of Public Works, or require that the telecommunications service provider compensate the District of Columbia for the cost of repair to a public right of way. (Sept. 9, 1996, D.C. Law 11-154, § 5, 43 DCR 3736.)

Legislative history of Law 11-154. — See note to § 43-1451.

§ 43-1455. Access to buildings.

The Public Service Commission shall have the authority to promulgate rules to ensure that access to public and privately owned buildings is afforded in a manner which does not unjustly or unreasonably discriminate between or among providers of telecommunications services. The Commission may initiate a rulemaking proceeding pursuant to this section only after determining that (1) federal telecommunications law and regulations authorize state public utility commissions to promulgate rules regarding building access; (2) substantial evidence exists that unjust and unreasonable discrimination regarding building access impaired telecommunications services competition in the District of Columbia; and (3) that promulgation of rules by the Commission regarding building access is the only effective means of removing the impairment to competition. (Sept. 9, 1996, D.C. Law 11-154, § 6, 43 DCR 3736.)

Legislative history of Law 11-154. — See note to § 43-1451.

§ 43-1456. Exemptions.

(a) This chapter shall not apply to cable television services performed pursuant to an existing cable television franchise agreement with the District of Columbia which is in effect on September 9, 1996. To the extent that a cable television company seeks to provide local exchange services within the District of Columbia, such company shall be regulated under the provisions of this chapter for their local exchange services.

(b) Pursuant to the federal Telecommunications Act of 1996, this chapter shall not apply to licensed or unlicensed wireless services authorized by the Federal Communications Commission operating in the District of Columbia. (Sept. 9, 1996, D.C. Law 11-154, § 7, 43 DCR 3736.)

Legislative history of Law 11-154. — See note to § 43-1451. munications Act of 1996, referred to in (b), is Pub. L. 104-104, which is codified throughout Title 47 of the United States Code.

References in text. — The federal Telecom-

§ 43-1457. Taxation of local exchange providers.

Notwithstanding any other provisions of law, each local exchange carrier in the District of Columbia shall be subject to the same District of Columbia taxes and fees and shall be entitled to the same tax exemptions, including, but not limited to, personal property taxes. For purposes of District of Columbia taxation only, a local exchange carrier shall include a telephone company that sells public utility services. For the taxation purposes of this chapter, the term “public utility services” shall include all local telecommunications services sold for a fee directly to the public irrespective of the technology used to provide the services, including, but not limited to, local commercial mobile services. (Sept. 9, 1996, D.C. Law 11-154, § 8, 43 DCR 3736.)

Legislative history of Law 11-154. — See note to § 43-1451.

§ 43-1458. Implementation policy.

(a) In the implementation of this chapter, it shall be the policy of the District government to promote the hiring, education, and training of District residents in every facet of telecommunications endeavor in the District.

(b) Pursuant to this chapter, it shall be the policy of the District government to promote the utilization of small, disadvantaged, women-owned, and District businesses in the establishment and contracting processes regarding telecommunications in the District.

(c) Nothing in this chapter shall be construed to contravene any provision in the federal Telecommunications Act of 1996 passed by the U.S. Congress in January and signed into law by President Clinton in February or to be inconsistent with the findings of the PSC in a proceeding pursuant to

§ 43-1452(k). (Sept. 9, 1996, D.C. Law 11-154, § 10, 43 DCR 3736; Mar. 24, 1998, D.C. Law 12-81, § 52, 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 substituted “or to be inconsistent” for “and not inconsistent” in (c).

Legislative history of Law 11-154. — See note to § 43-1451.

Legislative history of Law 12-81. — Law 12-81, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first

and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

References in text. — The federal Telecommunications Act of 1996, referred to in (c), is Pub. L. 104-104, which is codified throughout Title 47 of the United States Code.

CHAPTER 15. WATER SUPPLY, ASSESSMENTS, AND RATES.

- | | |
|--|---|
| <p>Sec.</p> <p>43-1501. Mayor to have power to erect water mains, pipes, and fireplugs.</p> <p>43-1502. Operations of Water Department to be under direction of Engineer's Office.</p> <p>43-1503. Water supply; rules and regulations.</p> <p>43-1504. Fiscal year of Water Department.</p> <p>43-1505. Payment of rates for water and water service.</p> <p>43-1506. Change of ownership or occupancy; statement of account.</p> <p>43-1507. Water main taxes and rents to be uniform.</p> <p>43-1508. Department of Environmental Services.</p> <p>43-1509. Prevention of water waste.</p> <p>43-1510. Use of Potomac water for mechanical and manufacturing purposes.</p> <p>43-1511. Large-quantity consumers to maintain water meters.</p> <p>43-1512. Water mains and service sewers erected at discretion of Mayor; costs assessed against abutting property.</p> <p>43-1513. Assessments for water mains.</p> <p>43-1514. Notice of assessments.</p> <p>43-1515. Water main and service sewer assessments payable in three installments.</p> <p>43-1516. Assessment of property in County of Washington for water mains and service sewers.</p> <p>43-1517. Relevying assessments when assessments declared void.</p> <p>43-1518. Disposal of funds received by Collector of Taxes.</p> <p>43-1519. "Service sewer" defined.</p> <p>43-1520. Refund of overpaid assessments.</p> <p>43-1521. Water rents — Refund for erroneous payment.</p> <p>43-1522. [Repealed].</p> <p>43-1522.1. [Repealed].</p> <p>43-1522.2. [Repealed].</p> <p>43-1522.3. [Repealed].</p> <p>43-1522.4. [Repealed].</p> <p>43-1522.5. [Repealed].</p> <p>43-1523. [Repealed].</p> <p>43-1524. [Repealed].</p> <p>43-1525. [Repealed].</p> <p>43-1526. Mayor to have authority to collect water rates in advance.</p> <p>43-1527. [Repealed].</p> <p>43-1528. Discontinuance of water service for failure to pay water charges.</p> | <p>Sec.</p> <p>43-1529. Lien for water charges.</p> <p>43-1530. Remedies not exclusive.</p> <p>43-1531. Water rates not to be a source of revenue.</p> <p>43-1532. [Repealed].</p> <p>43-1533. Payment of water rents from Washington Aqueduct into General Fund.</p> <p>43-1534. Fireplug tax — Levy permitted.</p> <p>43-1535. Same — Rates.</p> <p>43-1536. Same — Cessation upon introduction of water.</p> <p>43-1537. Same — Levy upon discontinuance of water service.</p> <p>43-1538. Water not to be diverted beyond District.</p> <p>43-1539. Delivery of water — Nearby Maryland; contract.</p> <p>43-1540. Same — Arlington County, Virginia.</p> <p>43-1541. Same — Falls Church, Virginia, and adjacent areas; installation expenses; payments; revocation of permit.</p> <p>43-1542. Investigation of distribution systems outside District of Columbia.</p> <p>43-1543. Acquiring of lands for pipelines authorized.</p> <p>43-1544. Acquisition of land and right-of-way for pipelines.</p> <p>43-1545. Potomac water to be furnished to charitable institutions without charge [Repeal effective 90 days after meeting of Board].</p> <p>43-1546. Unlawful tapping of water pipe; penalty.</p> <p>43-1547. Notification of violations.</p> <p>43-1548. Penalty for damaging or defacing water pipes.</p> <p>43-1549. Main pipes; laying for use of public buildings.</p> <p>43-1550. Unauthorized opening of mains or pipes.</p> <p>43-1551. "Mayor," "District of Columbia water system" defined.</p> <p>43-1552. Water and water service supplied for the use of the government of the United States.</p> <p>43-1553. Contract authority of Mayor regarding costs of Potomac River reservoir; contract payments; appropriations.</p> <p>43-1554. Acquisition of land for Washington Aqueduct.</p> |
|--|---|

§ 43-1501. Mayor to have power to erect water mains, pipes, and fireplugs.

The Mayor of the District of Columbia shall have the power to lay water mains and water pipes and to erect fireplugs and hydrants wherever the same may be in his judgment necessary for the public safety, comfort, or health. (R.S., D.C., § 204; June 17, 1890, 26 Stat. 159, ch. 428; 1973 Ed., § 43-1501.)

Cross references. — As to fees for connections to sewers, water main, gas main or other underground structure, see § 1-1024.

As to construction of sewers and water mains under District of Columbia Alley Dwelling Act, see § 5-101.

As to jurisdiction and control over public ways, see § 7-102.

As to annual estimate of expenses, see § 47-212.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Parsons v. District of Columbia*, 170 U.S. 45, 18 S. Ct. 521, 42 L. Ed. 943 (1898); *Wight v. Davidson*, 181 U.S. 371, 21 S. Ct. 616, 45 L. Ed. 900 (1901).

§ 43-1502. Operations of Water Department to be under direction of Engineer's Office.

The operations of the Water Department of the District of Columbia shall be under the direction of the Engineer's Office of the District, subject to the control of the Mayor of the District of Columbia. (July 1, 1882, 22 Stat. 143, ch. 263, § 2; 1973 Ed., § 43-1502.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

Transfer of functions. — Reorganization Order No. 28 of the Board of Commissioners, dated April 3, 1953, now redesignated Organization Order No. 147, dated August 19, 1965, established a Department of Sanitary Engineering headed by a Director. The Department performed sanitary engineering services and operations for the District including water distribution, sanitary, storm, and combined sewer systems, sewage treatment, and collection and disposal of waste material. The Office of the Water Registrar and the previously existing Department of Sanitary Engineering (which included the Sewer Division, Water Division, Sanitation Division, and the Sewage Treatment Plant) were abolished and their functions transferred to this Department. The Orders were issued pursuant to Reorganization Plan No. 5 of 1952. Functions of the Department of

Sanitary Engineering as set forth in Organization Order No. 147, as amended, were transferred to the Department of Environmental

Services by Commissioner's Order No. 71-255, dated July 27, 1971.

§ 43-1503. Water supply; rules and regulations.

Full power is given to the Mayor of the District of Columbia to supply the inhabitants of the District with the Potomac water from the aqueduct mains or pipes laid in the streets and avenues by the United States; and to the Council of the District of Columbia to make all laws and regulations for the proper distribution of the same, subject to the provisions of this chapter, and to the control of the Chief of Engineers, as provided in § 51 of Title 40, United States Code. The supply of Potomac water may be extended to points in the District beyond the limits of Washington upon like terms and conditions as are provided by law for the supply of the same in that city. (R.S., D.C., § 195; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3; June 10, 1879, 21 Stat. 9, ch. 16; Feb. 25, 1885, 23 Stat. 319, ch. 145; Feb. 11, 1895, 28 Stat. 650, ch. 79; 1973 Ed., § 43-1503.)

Cross references. — As to rules and regulations for protection of life, health and property, see § 1-319.

As to procurement generally, see § 1-1181.1 et seq.

As to sanitary sewage works and Council's authority to make regulations, see § 43-1614.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(323) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Parsons v. District of Columbia*, 170 U.S. 45, 18 S. Ct. 521, 42 L. Ed. 943 (1898).

§ 43-1504. Fiscal year of Water Department.

The fiscal year of the Water Department of the District of Columbia shall conform to the regular fiscal year of the general government; the rates shall be levied and collected at least once every 12 months, or whenever practicable in the judgment of the Council of the District of Columbia, at least once every 6 months. (July 1, 1882, 22 Stat. 144, ch. 263, § 2; May 18, 1954, 68 Stat. 103, ch. 218, § 107; 1973 Ed., § 43-1504.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(323) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — Reorganization Order No. 28 of the Board of Commissioners, dated April 3, 1953, now redesignated Organization Order No. 147, dated August 19, 1965, established a Department of Sanitary Engineering headed by a Director. The Department performed sanitary engineering services and operations for the District including water distribution, sanitary, storm, and combined sewer systems, sewage treatment, and collection and

disposal of waste material. The Office of the Water Registrar and the previously existing Department of Sanitary Engineering (which included the Sewer Division, Water Division, Sanitation Division, and the Sewage Treatment Plant) were abolished and their functions transferred to this Department. The Orders were issued pursuant to Reorganization Plan No. 5 of 1952. Functions of the Department of Sanitary Engineering as set forth in Organization Order No. 147, as amended, were transferred to the Department of Environmental Services by Commissioner's Order. No. 71-255, dated July 27, 1971.

§ 43-1505. Payment of rates for water and water service.

All rates for water and water service hereby established shall be payable at least once semiannually. When the computation of the amount of any bill for any of such services results in a fraction of one-half cent or more, the next highest amount not containing a fraction shall be charged. (1973 Ed., § 43-1504a; Oct. 21, 1975, D.C. Law 1-23, title VII, § 701(c), 22 DCR 2115.)

Legislative history of Law 1-23. — Law 1-23 was introduced in Council and assigned Bill No. 1-47, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, and second readings, and reconsideration of second read-

ing, on April 15, 1975, June 1, 1975, June 24, 1975 and July 11, 1975, respectively. Signed by the Mayor on July 23, 1975, it was assigned Act No. 1-34 and transmitted to both Houses of Congress for its review.

§ 43-1506. Change of ownership or occupancy; statement of account.

(a) Any person who desires a statement of the account of any water and sanitary sewer service charge to the date of the acquisition of any real property shall make a written request to the Department of Public Works ("Department") on or before the date of the acquisition, except that the Mayor may enforce payment of water and sewer service charges by shutting off the water supply or refusing to restore the water supply without regard to a change of ownership or occupancy of any real property. The Department shall issue a statement of the account within 30 days after receipt of the request for a statement of the account.

(b) The Mayor, with prior written notice to the owner of the date and time of entry, and consistent with constitutional guidelines, may enter any building, establishment, or other premises furnished water or sanitary sewer service. If the Mayor is unable to gain entry to the real property after 2 attempts, the Mayor shall notify the owner or occupant to contact the Department within 3 business days after notice is mailed to the owner. If the owner or occupant fails to contact the Department, it shall be presumed that the owner or occupant refuses to permit entry to the property and the Mayor may impose a penalty of \$100 and shut off the water supply to the real property. Upon the payment of the penalty or issuance of a final decision where the owner files a request for

administrative review, the Mayor shall restore the water supply. (1973 Ed., § 43-1504b; Oct. 21, 1975, D.C. Law 1-23, title VII, § 703, 22 DCR 2116; June 13, 1990, D.C. Law 8-136, § 3, 37 DCR 2620.)

Effect of amendments. — D.C. Law 8-136 rewrote the section.

Legislative history of Law 1-23. — See note to § 43-1505.

Legislative history of Law 8-136. — See note to § 43-1651.

§ 43-1507. Water main taxes and rents to be uniform.

Water main taxes and water rents shall be uniform in said District. (June 10, 1879, 21 Stat. 9, ch. 16; 1973 Ed., § 43-1505.)

Cited in Ruppert Real Estate, Inc. v. McCarter, 111 WLR 1953 (Super. Ct. 1983).

§ 43-1508. Department of Environmental Services.

The Department of Environmental Services shall perform such duties connected with the Water Department of the District as may be proper and necessary, under the direction of the Mayor of the District of Columbia. He shall give bonds for the faithful performance of his duty in the sum of \$10,000. (Leg. Assem., Aug. 23, 1871, ch. 108, § 16; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3; 1973 Ed., § 43-1506.)

Cross references. — As to procurement generally, see § 1-1181.1 et seq.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Water Registrar abolished. — Reorganization Order No. 28 of the Board of

Commissioners, dated April 3, 1953, now redesignated Organization Order No. 147, dated August 19, 1965, established a Department of Sanitary Engineering headed by a Director. The Department performed sanitary engineering services and operations for the District including water distribution, sanitary, storm, and combined sewer systems, sewage treatment, and collection and disposal of waste material. The Office of the Water Registrar and the previously existing Department of Sanitary Engineering (which included the Sewer Division, Water Division, Sanitation Division, and the Sewage Treatment Plant) were abolished and their functions transferred to this Department. The Orders were issued pursuant to Reorganization Plan No. 5 of 1952. Functions of the Department of Sanitary Engineering as set forth in Organization Order No. 147, as amended, were transferred to the Department of Environmental Services by Commissioner's Order No. 71-255, dated July 27, 1971.

The functions of the Department of Environmental Services were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 43-1509. Prevention of water waste.

In order to prevent unnecessary waste of Potomac water, and in order to more fully enforce the laws in relation to the distribution of the same, the Chief of Engineers is authorized, after giving notice, to shut off the water when such notice shall be disregarded from any places where a waste of water is occurring. (R.S., D.C., § 214; 1973 Ed., § 43-1507.)

§ 43-1510. Use of Potomac water for mechanical and manufacturing purposes.

The use of Potomac water for mechanical and manufacturing purposes, or for private fountains, street and pavement washers, shall be allowed only when, in the opinion of the Chief of Engineers, it will not be detrimental to the general distribution of water in the District of Columbia. (R.S., D.C., § 215; Feb. 25, 1885, 23 Stat. 319, ch. 145; 1973 Ed., § 43-1508.)

§ 43-1511. Large-quantity consumers to maintain water meters.

(a) The supply of water to all manufacturing establishments, hotels, livery stables, and other commercial buildings, shall be determined by meters erected and maintained at the expense of the consumer.

(b) The bill for water meter service, including a charge for any repair made by the District, shall be due and payable when rendered. The Mayor shall impose a one-time charge of 10% for any water meter service charge that remains unpaid for more than 30 days and a penalty of 1% per month compounded monthly for any water meter repair service that remains unpaid for more than 60 days from the date the bill is rendered.

(c) In accordance with § 43-1529, the Mayor shall impose and enforce a continuing lien upon land and land improvements that are furnished water meter services if any charges remain unpaid for more than 60 days from the date the bill for services is rendered.

(d) The Mayor, with prior written notice to the owner of the date and time of entry, and consistent with constitutional guidelines, may enter any building, establishment, or other premises to inspect, install, replace, read, or repair any water meter required to be installed pursuant to the Public Works Act. If the Mayor is unable to gain entry to the real property after 2 attempts, the Mayor shall notify the owner or occupant to contact the Department within 3 business days after notice is mailed to the owner. If the owner or occupant fails to contact the Department, it shall be presumed that the owner refuses to permit entry to the property and the Mayor may impose a penalty of \$100 and shut off the water supply to the real property. Upon the payment of the penalty or issuance of a final decision where the owner files a request for administrative review, the Mayor may restore the water supply. (R.S., D.C., § 216; 1973 Ed., § 43-1509; June 13, 1990, D.C. Law 8-136, § 4, 37 DCR 2620.)

Legislative history of Law 8-136. — Law 8-136, the “District of Columbia Water and Sewer Operations Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-269, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on March 27, 1990, and April 10, 1990, respectively. Signed by the

Mayor on April 17, 1990, it was assigned Act No. 8-192 and transmitted to both Houses of Congress for its review.

References in text. — The “Public Works Act,” referred to in the first sentence of (d), is 68 Stat. 104, ch. 218, codified in numerous places in the D.C. Code. See disposition table in Volume 11.

§ 43-1512. Water mains and service sewers erected at discretion of Mayor; costs assessed against abutting property.

The Mayor of the District of Columbia is authorized and directed, whenever in his judgment the same may be necessary for the public safety, health, comfort, or convenience, to construct water mains and service sewers in any street, avenue, road, or alley in the District of Columbia; and the Assessor of said District shall levy assessments for the same against abutting property in the amount and manner hereinafter prescribed. (Apr. 22, 1904, 33 Stat. 244, ch. 1417, § 1; 1973 Ed., § 43-1510.)

Cross references. — As to requirements for new or replacement water or sewer systems to reduce flood hazards, see § 5-303.

As to repair or renewal by District and compensation for past repairs of water service pipes and building sewers, see § 6-405.

As to jurisdiction and control over public ways, see § 7-102.

As to laying water mains and sewers on permit plan, see §§ 7-609 and 7-610.

As to laying pipes in streets under control of United States, see § 7-1404.

As to special assessments and protests against, see Chapter 12 of Title 47.

Section references. — This section is referred to in §§ 43-1515, 43-1517, 43-1518 and 43-1519.

Appropriations authorized. — Public Law 104-194, 110 Stat. 2362, the District of Columbia Appropriations Act, 1997, provided for construction projects an increase of \$46,923,000 (including an increase of \$34,000,000 for the highway trust fund, reallocations and rescissions for a net rescission of \$120,496,000 from local funds appropriated under this heading in prior fiscal years and an additional \$133,419,000 in Federal funds), as authorized by §§ 43-1512 through 43-1519; §§ 43-1524, 43-1527 and 43-1654; and §§ 9-219 and 47-3404; including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: Provided, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all

procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: Provided further, That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1998, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1998: Provided further, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

Public Law 104-194, 110 Stat. 2362, the District of Columbia Appropriations Act, 1997, provided for the Water and Sewer Enterprise Fund, \$221,362,000 from other funds of which \$41,833,000 shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Assessor abolished. — The Office of the Assessor was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Assessor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, abolished the Office of the Assessor and transferred the functions to the Finance Office in the Department of General Administration. The same Order provided that an Office of the Assessor would be created in the Finance Office. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, provided that the Finance Office (consisting of the Office of the Finance Officers, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) shall continue under the direction and

control of the Director of General Administration, and prescribed the functions thereof. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. The Office of Budget and Financial Management was replaced by Organization Order 50, dated December 31, 1974, which Order established the Office of Budget and Management Systems. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Resource Development.

Liability for negligent operation of sewerage department. — The District of Columbia has no immunity from the consequences of its negligent operation of the sewerage department. *Scull v. District of Columbia*, 250 F.2d 767 (D.C. Cir. 1957), cert. denied, 356 U.S. 920, 78 S. Ct. 703, 2 L. Ed. 2d 715 (1958).

§ 43-1513. Assessments for water mains.

For laying or constructing water mains in the District of Columbia assessments shall be levied at the rate of \$3 per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a water main shall be laid, and that for laying or constructing service sewers in the District of Columbia assessments shall be levied at the rate of \$4 per linear front foot against all lots or land abutting upon that part of the street, avenue, road, or alley in which a sewer shall be laid; provided, that assessments for water mains and service sewers in the case of lots or parcels of land not more than 100 feet in depth shall be levied upon the fronts or rears of such lots or parcels of land, and not upon both the fronts and rears of such lots or parcels of land; but lots or parcels of land more than 100 feet in depth, except corner lots, shall be assessed upon both their fronts and rears when water mains or service sewers are laid abutting the same; provided, that corner lots shall be assessed for water mains and service sewers only on their short fronts with a depth of not exceeding 100 feet; any excess of the other front over 100 feet shall be subject to assessment, as hereinbefore provided; provided, that the areas of all lots or parcels of land which have been assessed for water mains by the

square foot under any previous act of Congress, or of the late legislative assembly of the District of Columbia, shall not be again assessed for water mains; provided further, that when the Mayor of the District of Columbia shall deem it advantageous to lay water mains or service sewers on each side of any street, avenue, road, or alley assessments shall be levied at the rate, within the time and in the manner in this section provided for, against the lots abutting the side of the street, avenue, road, or alley in which the water main or service sewer is laid. (Aug. 11, 1894, 28 Stat. 275, ch. 253; Apr. 22, 1904, 33 Stat. 244, ch. 1417, § 2; Dec. 22, 1927, 45 Stat. 11, ch. 5; July 3, 1930, 46 Stat. 989, ch. 848, § 1; June 4, 1934, 48 Stat. 876, ch. 389, § 1; July 16, 1947, 61 Stat. 360, ch. 258; May 18, 1954, 68 Stat. 109, ch. 218, title III, §§ 301, 302; 1973 Ed., § 43-1511.)

Section references. — This section is referred to in § 43-1515.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Assessment exceeding actual cost of work is not bad where the laying of the main was a part of a water-system and the assessment included a fund to keep the system in efficient repair. *Parsons v. District of Columbia*, 170 U.S. 45, 18 S. Ct. 521, 42 L. Ed. 943 (1898).

Judicial review of necessity and benefits of work. — To open the questions of the necessity and benefits of work for review by the courts, on the petition of any and every property holder, would create endless confusion; when such questions are submitted to the Commission, the inquiry becomes in its nature judicial. *Parsons v. District of Columbia*, 170 U.S. 45, 18 S. Ct. 521, 42 L. Ed. 943 (1898).

Cited in *Wight v. Davidson*, 181 U.S. 371, 21 S. Ct. 616, 45 L. Ed. 900 (1901); *Johnson v. Rudolph*, 16 F.2d 525 (D.C. Cir. 1926).

§ 43-1514. Notice of assessments.

The Assessor of the District of Columbia shall give notices as herein provided of the levying of assessments for water mains and service sewers. Assessments shall be levied within 60 days after the completion of the main or service sewer, and the owner or owners affected by such assessments shall be notified that the same have been levied by a notice which shall be served upon the owner of the lot or parcel of land if he or she be a resident of the District of Columbia, and his or her residence be known. If the owner be a nonresident or his or her residence be unknown, the notice shall be served on his or her agent or tenant. The service of such notice, where the owner or his or her agent or tenant resides in the District of Columbia, shall be personal or by leaving the same with some person of suitable age, either a member of his family or in his employ, at the residence or place of business of such owner, agent, or tenant; and return of such service, stating the manner thereof, shall be made in writing under oath and filed in the office of the Assessor of the District of Columbia. If there be no agent or tenant known to said Assessor, and the owner

or owners be not residents of the District of Columbia, or if the owner be a resident of the District of Columbia and cannot be found therein, and no person of suitable age as aforesaid can be found at his or her residence or place of business, notice shall be given by advertisement once a week for 3 successive weeks in some daily newspaper published in said District, and in said publication of said notice each several piece of property shall be described in a separate paragraph, and the cost of such advertisement shall be added to the amount of said assessment and collected in the same manner that said assessment is collected. (Apr. 22, 1904, 33 Stat. 245, ch. 1417, § 3; 1973 Ed., § 43-1512.)

Section references. — This section is referred to in §§ 43-1515, and 43-1517 to 43-1519.

Office of Assessor abolished. — The Office of the Assessor was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Assessor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, abolished the Office of the Assessor and transferred the functions to the Finance Office in the Department of General Administration. The same order provided that an Office of the Assessor would be created in the Finance Office. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, provided that the Finance Office (consisting of the Office of the Finance Officers, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) shall continue under the direction and control of the Director of General Administra-

tion, and prescribed the functions thereof. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. The Office of Budget and Financial Management was replaced by Organization Order 50, dated December 31, 1974, which Order established the Office of Budget and Management Systems. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Resource Development.

§ 43-1515. Water main and service sewer assessments payable in three installments.

Assessments for water mains and service sewers shall be payable in 3 equal installments, the first of which shall be due and payable without interest within 30 days from date of service of notice or of the last publication of notice as the case may be, the second within one year, and the third within 2 years from the date of assessment, and interest at the rate of 6% per annum shall be charged on all amounts which shall remain unpaid at the expiration of 30 days from the date of service of notice or last publication as the case may be; but the owner of the property assessed may, at his option, at any time after the levying of such assessment, pay the same in full; provided, that if any installment of any assessment for water main or service sewer levied under the provisions of §§ 43-1512 to 43-1519, inclusive, shall not be paid when due and payable the property against which said assessment was levied may be sold for said

delinquent installment at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if said installment shall not have been paid prior to said sale. (Apr. 22, 1904, 33 Stat. 245, ch. 1417, § 4; 1973 Ed., § 43-1513.)

Cross references. — As to payment of taxes and special assessments on family dwellings, see Chapter 11 of Title 47. **Section references.** — This section is referred to in §§ 43-1517, 43-1518 and 43-1519.

§ 43-1516. Assessment of property in County of Washington for water mains and service sewers.

Property in the County of Washington, not subdivided into blocks or lots, or both, shall not be assessed for water mains or service sewers until subdivided; provided, that where houses are built on any unsubdivided land and connection is made with a water main or service sewer, assessment shall be made as herein provided for in the case of subdivided property by assessing a frontage of 50 feet on each side of said connection with a depth of 100 feet, except that no double assessment shall be levied; said assessment to be levied within 60 days after said connection is made; and if such unsubdivided land is thereafter subdivided into blocks or lots, such lots shall be assessed as herein provided as to subdivided lands, but the 50 feet on each side of said connection, with a depth of 100 feet, shall not be again assessed; provided further, that assessments at the rate and in the manner herein provided for shall be levied against each lot or parcel of land abutting any water main or service sewer in all subdivisions of land, within 60 days after the recording of such subdivision in the office of the Surveyor of the District of Columbia, except in cases where said lots or parcels of land have been previously assessed for the same main or service sewer. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 5; 1973 Ed., § 43-1514.)

Section references. — This section is referred to in § 43-1518.

§ 43-1517. Relevying assessments when assessments declared void.

The Assessor of the District of Columbia is hereby authorized and directed in cases where water-main assessments, or assessments for service sewers, may be quashed, canceled, set aside, or declared void by the Superior Court of the District of Columbia, or may otherwise be canceled or set aside, by reason of an imperfect or erroneous description of the lot or parcel of ground against which the same shall have been levied, by reason of such tax or assessment not having been authenticated by the proper officer or by reason of a defective return of service of notice, or for any technical reason other than the right of the authorities of the District of Columbia to levy assessment or lay the main or service sewer in respect of which assessment was levied, to relevy such assessment at the rate and in the manner provided for in §§ 43-1512 to 43-1519, inclusive; provided, that such reassessment shall be made within 60 days from date of such cancellation. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 7;

June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 588, Pub. L. 91-358, title I, § 168(b); 1973 Ed., § 43-1515.)

Section references. — This section is referred to in §§ 43-1515, 43-1518 and 43-1519.

Office of Assessor abolished. — The Office of the Assessor was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Assessor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, abolished the Office of the Assessor and transferred the functions to the Finance Office in the Department of General Administration. The same order provided that an Office of the Assessor would be created in the Finance Office. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, provided that the Finance Office (consisting of the Office of the Finance Officers, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) shall continue under the direction and control of the Director of General Administration, and prescribed the functions thereof. The

executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. The Office of Budget and Financial Management was replaced by Organization Order No. 50, dated December 31, 1974, which Order established the Office of Budget and Management Systems. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Resource Development.

§ 43-1518. Disposal of funds received by Collector of Taxes.

All sums received by the Collector of Taxes under the provisions of §§ 43-1512 to 43-1519, inclusive, on account of assessments levied for the construction of service sewers shall be credited to the appropriation under which the sewer was constructed for the fiscal year in which such sums shall be received. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 8; 1973 Ed., § 43-1516.)

Section references. — This section is referred to in §§ 43-1515, 43-1517 and 43-1519.

Office of Collector of Taxes abolished. — The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by

a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part

IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganiza-

tion Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

§ 43-1519. "Service sewer" defined.

A service sewer within the meaning of the provisions of §§ 43-1512 to 43-1519, inclusive, shall be a sewer with which connection may be directly made for the purpose of providing sewerage facilities to abutting property, and such sewers shall be so indicated on the records of the Sewer Division of the Engineer Department of the District of Columbia. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 9; 1973 Ed., § 43-1517.)

Section references. — This section is referred to in §§ 43-1515, 43-1517 and 43-1518.

Transfer of functions. — Reorganization Order No. 28 of the Board of Commissioners, dated April 3, 1953, now redesignated Organization Order No. 147, dated August 19, 1965, established a Department of Sanitary Engineering headed by a Director. The Department performed sanitary engineering services and operations for the District including water distribution, sanitary, storm, and combined sewer systems, sewage treatment, and collection and disposal of waste material. The Office of the

Water Registrar and the previously existing Department of Sanitary Engineering (which included the Sewer Division, Water Division, Sanitation Division, and the Sewage Treatment Plant) were abolished and their functions transferred to this Department. The Orders were issued pursuant to Reorganization Plan No. 5 of 1952. Functions of the Department of Sanitary Engineering as set forth in Organization Order No. 147, as amended, were transferred to the Department of Environmental Services by Commissioner's Order No. 71-255, dated July 27, 1971.

§ 43-1520. Refund of overpaid assessments.

In all cases where a water main has heretofore been or may hereafter be laid in a public street or way, and in order to secure the laying of such main the cost or a part thereof has been paid to the District of Columbia prior to the laying of said main by any person or corporation, there shall be repaid from time to time to such person or corporation, out of the collections from the assessment for such main, all of the amounts so paid over and above the assessment chargeable against the land owned or controlled by said person or corporation. (June 2, 1900, 31 Stat. 252, ch. 612, § 2; 1973 Ed., § 43-1518.)

Cross references. — As to refund of taxes, see § 47-1317.

§ 43-1521. Water rents — Refund for erroneous payment.

The Mayor of the District of Columbia is hereby authorized to cause all water rents erroneously paid after March 3, 1905, in the District of Columbia to be refunded in the manner prescribed by law for the refunding of erroneously paid taxes: Provided, that application for refund shall be made within 2 years after such erroneous payment. And after March 3, 1905, the said Mayor is authorized to cause to be refunded in the same manner and subject to the same limitations all money paid for water for any special purpose where the project is abandoned and the water not used, and for tapping water mains and for

furnishing stopcock where the service is not rendered and the material is not furnished; and all money refunded under this section shall be paid from and charged to the water fund. (Mar. 3, 1905, 33 Stat. 912, ch. 1406; 1973 Ed., § 43-1519.)

Cross references. — As to refund of taxes erroneously paid, see § 47-1317.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Liability for erroneous collection. — Where the record showed that protest made upon payment of a water bill was handed to the proper official with a request that he show the protest to the required authority, and there was no showing that Collector of Taxes took any part in the controversy or committed any of the acts which compelled the payment or that he had any notice that bill was being paid under protest no personal liability rested on Collector upon showing that the collection was erroneously made. *Farrell v. Ward*, App. D.C., 53 A.2d 46 (1947).

Cited in *Ruppert Real Estate, Inc. v. McCarter*, 111 WLR 1953 (Super. Ct. 1983).

§ 43-1522. Same — Rates.

Repealed pursuant to § 301 of D.C. Law 11-111.

Legislative history of Law 11-111. — Law 11-111, the “Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996,” was introduced in Council and assigned Bill No. 11-102, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 7, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 31, 1996, it was assigned

Act No. 11-201 and transmitted to both Houses of Congress for its review. D.C. Law 11-111 became effective on April 18, 1996.

Repeal effective 90 days after meeting of Board. — Section 301 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1522.1. Same — Nonprofit housing developments — Eligibility for rate reduction.

Repealed pursuant to § 305 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1522.

Repeal effective 90 days after meeting of Board. — Section 305 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1522.2. Same — Same — Forgiveness of outstanding charges.

Repealed pursuant to § 305 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1522.

Repeal effective 90 days after meeting of Board. — Section 305 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1522.3. Same — Same — Rules.

Repealed pursuant to § 305 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1522.

Repeal effective 90 days after meeting of Board. — Section 301 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1522.4. Same — Same — Submission of willful false statements.

Repealed pursuant to § 305 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1522.

Repeal effective 90 days after meeting of Board. — Section 305 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1522.5. Same — Same — Definitions.

Repealed pursuant to § 305 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1522.

Repeal effective 90 days after meeting of Board. — Section 305 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1523. Same — Increase.

Repealed pursuant to § 302 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1522.

Repeal effective 90 days after meeting of Board. — Section 302 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1524. Council authorized to fix water rates.

Repealed pursuant to § 303 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1522.

Repeal effective 90 days after meeting of Board. — Section 303 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1525. Water and water service rates and charges.

Repealed pursuant to § 302 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1522.

Repeal effective 90 days after meeting of Board. — Section 304 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1526. Mayor to have authority to collect water rates in advance.

The Mayor of the District of Columbia has authority to provide for the collection of water rates, in advance or otherwise, from the owner or occupants of all buildings or establishments using the water; and to provide for stopping the supply of water to any dwelling or establishment upon a failure to pay the rate, and to carry into full effect the provisions of this chapter. (R.S., D.C., § 197; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 3; 1973 Ed., § 43-1521.)

Cross references. — As to discontinuance of water service for failure to pay water charges, see § 43-1528.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Purchaser of property could not be compelled to pay for water used by former occupants, either by §§ 43-1519 to 43-1522 or regulations issued by commissioners pursuant thereto. *Farrell v. Ward*, App. D.C., 53 A.2d 46 (1947).

Purchaser's ownership dates from date of sale. — Where the plaintiff was the highest bidder at a foreclosure sale of realty under a deed of trust, he became owner as of the date of the sale and not as of the date of delivery of the deed for the purposes of determining when the plaintiff should give notice of the purchase of such property to District water officials. *Urciolo v. District of Columbia*, App. D.C., 82 A.2d 909 (1951).

Failure to give notice of purchase. — One purchasing property within the District

without notifying the proper officials may be compelled to pay full current water rates for property. *Urciolo v. District of Columbia*, App. D.C., 82 A.2d 909 (1951).

Liability of officials requiring erroneous payment. — In requiring purchaser of property to pay for water used by former occupants of purchased property, District officials were acting within scope of their official duties, and even though they made a mistake in exercise of judgment or acted on erroneous construction of the law, they could not be held personally liable to purchaser. *Farrell v. Ward*, App. D.C., 53 A.2d 46 (1947).

Recovery from prior tenant for payment of accrued water bill. — A tenant who failed to give written notice of acquiring control of premises within 5 days thereof and who was thereafter required to pay a water bill which had accrued during a prior tenancy upon municipal authorities' threatening suspension of water service, was not a mere "volunteer," so as to preclude recovery from prior tenant. *Simmons v. Quick*, App. D.C., 37 A.2d 656 (1944).

The fact that a tenant, by failing to give written notice of acquiring control of premises within 5 days thereof, became secondarily liable for water bill which accrued during a prior tenancy, did not relieve prior tenant of his primary liability. *Simmons v. Quick*, App. D.C., 37 A.2d 656 (1944).

A tenant who was seeking reimbursement for water bill which accrued during a prior tenancy stood in the shoes of a creditor and could not recover more than was actually due by prior tenant. *Simmons v. Quick*, App. D.C., 37 A.2d 656 (1944).

Payment by tenant where owner failed to pay water rents. — District officials acted within their authority in refusing to turn water on for new principal tenant of premises where owners of premises had not, for many years,

paid, or secured to be paid, water rents, and having voluntarily paid such arrearages in order to secure water supply, tenant could not recover from such officials the amount paid by

him and damages claimed to have resulted from alleged conspiracy to illegally force him to pay such amount. *Quick v. District of Columbia*, App. D.C., 90 A.2d 235 (1952).

§ 43-1527. Additional charge on unpaid water bills.

Repealed pursuant to § 303 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1522.

Repeal effective 90 days after meeting of Board. — Section 303 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1528. Discontinuance of water service for failure to pay water charges.

(a) The Mayor of the District of Columbia is authorized to provide for the collection of water charges, in advance or otherwise, from the owner or occupant of any building, establishment, or other place furnished water or water service by the District, and to shut off the water supply to any such building, establishment, or other place upon failure of the owner or occupant thereof to pay such water charges within 30 days from the date of rendition of the bill therefor. Such authority to shut off the water supply may be exercised by the Mayor regardless of any change in ownership or occupancy of such building, establishment, or other place. When the water supply to any such building, establishment, or other place has been shut off for failure to pay such water charges, whether the water supply to such building, establishment, or other place was shut off before or after the enactment of this title, the Mayor shall not again supply such building, establishment, or other place with water until all arrears of water charges, together with penalties and the costs actually incurred in shutting off and restoring the water supply, are paid.

(b) If the water supply to any property has been shut off for failure to pay District water and sanitary sewer service charges, and later restored without the express authorization of the Mayor, the Mayor shall impose a fine in an amount not less than 20% of the delinquent charges or more than \$100, whichever is greater, upon the owner or occupant of the property, unless the Mayor determines that the owner or occupant did not restore or solicit a person to restore the water. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 103; 1973 Ed., § 43-1521b; June 13, 1990, D.C. Law 8-136, § 2(b), 37 DCR 2620; May 18, 1993, D.C. Law 10-3, § 2(a), 40 DCR 2252; Nov. 25, 1993, D.C. Law 10-65, § 501(a), 40 DCR 7351.)

Cross references. — As to charges for overdue bills and enforcement of liens arising from sanitary sewage service, see § 43-1610.

Section references. — This section is referred to in §§ 43-1529, 43-1530, 43-1552, and 43-1610.

Legislative history of Law 8-136. — See note to § 43-1511.

Legislative history of Law 10-3. — Law 10-3, the “D.C. Water and Sewer Operations Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-97.

The Bill was adopted on first and second readings on February 2, 1993, and March 2, 1993, respectively. Signed by the Mayor on March 24, 1993, it was assigned Act No. 10-15 and transmitted to both Houses of Congress for its review. D.C. Law 10-3 became effective on May 18, 1993.

Legislative history of Law 10-65. — Law 10-65, the “Omnibus Spending Reduction Act of 1993,” was introduced in Council and assigned Bill No. 10-323, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 6, 1993, it was assigned Act No. 10-120 and transmitted to both Houses of Congress for its review. D.C. Law 10-65 became effective on November 25, 1993.

Mayor authorized to issue rules. — See note to § 43-1527.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Due process does not require trial-type hearing to resolve dispute regarding bill.

— Although customer has a property interest in water services, due process does not require that she receive a trial-type hearing to resolve a dispute regarding her bill. *Bryant v. Barry*, App. D.C., 456 A.2d 1252 (1983).

Where procedures established for customers to protest their water bills adequately provided customer disputing her bill with an opportunity for presentation to a designated employee of the customer’s complaint, due process does not require a trial-type hearing. *Bryant v. Barry*, App. D.C., 456 A.2d 1252 (1983).

There is no statutory authority that explicitly compels the District to shut off water supply for failure to pay water charges; such authority as is statutorily granted is discretionary only. *Masszonias v. Washington*, 321 F. Supp. 965 (D.D.C. 1971), appeal dismissed, 476 F.2d 915 (D.C. Cir. 1973).

Liability of tenants for landlord’s failure to pay water bills. — Where low income tenants have paid rent to landlord whom they have relied upon to pay water bills and who has then abandoned the building and its past due water bill, and relocation of those tenants is difficult, if not impossible, due to the critical housing shortage existing in the District of Columbia, it would be an abuse of discretion for the District of Columbia to shut off the water and thereby force the tenants to pay that for which they may not be liable. *Masszonias v. Washington*, 321 F. Supp. 965 (D.D.C. 1971), appeal dismissed, 476 F.2d 915 (D.C. Cir. 1973).

§ 43-1529. Lien for water charges.

(a) Except as provided in subsections (c) and (d) of this section, if an owner of real property fails to pay District water and sanitary sewer service charges in full in accordance with § 43-1527 or § 43-1528, on or after the 60th day, but not later than the 120th day, after the bill is rendered, the Mayor shall file a certificate of delinquency with the Recorder of Deeds. Upon filing, the certificate of delinquency shall constitute a continuing lien against the real property and show the amount of unpaid charges for District water and sanitary sewer services. The Mayor shall enforce the lien if any water and sanitary sewer service charges remain unpaid for more than 180 days from the date the bill is rendered or for more than 15 days after a final decision of an appeal challenging the bill, whichever is later. The real property shall be sold for the unpaid water and sanitary sewer service charges, penalties, interest, and administrative costs at the next tax sale conducted pursuant to § 47-1301, in accordance with the provisions for the sale of property for delinquent real property taxes pursuant to Chapter 13 of Title 47. If any real property sold for

unpaid water and sanitary sewer service charges is not redeemed by the owner within 180 days from the date of sale, including payment of 2% interest for each month until the property is redeemed, the Mayor shall furnish a deed to the purchaser or holder of the certificate of sale in accordance with § 47-1304. Proceeds from the sale that represent unpaid water charges shall be credited to the Water and Sewer Enterprise Fund of the District of Columbia as established by § 47-375(g).

(b) A lien for water and sanitary sewer charges shall have priority over any other lien, except a lien for District taxes. The lien for water and sanitary sewer service charges shall remain in effect until the charges set forth in the certificate and any accrued additional charges, interest, penalties, and administrative costs are paid in full. Upon final payment of any delinquent charges, penalties, interest, and administrative costs, the Mayor shall file promptly a certificate of satisfaction with the Recorder of Deeds.

(c) The Mayor may defer or forgive, in whole or in part, any water and sanitary sewer service charges due the District for any qualified real property pursuant to § 5-1403.

(d) The Mayor shall not sell the residence of an owner who occupies a single family home for failure to pay District water and sanitary sewer charges in accordance with subsection (a) of this section. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 104; 1973 Ed., § 43-1521c; Oct. 20, 1988, D.C. Law 7-177, § 9(a), 35 DCR 6158; June 13, 1990, D.C. Law 8-136, § 2(c), 37 DCR 2620; Apr. 9, 1997, D.C. Law 11-198, § 203, 43 DCR 4569.)

Cross references. — As to charges for overdue bills and enforcement of liens arising from sanitary sewage service, see § 43-1610.

Section references. — This section is referred to in §§ 5-1403, 43-1511, 43-1530, 43-1552, 43-1609, 43-1610, 43-1689, 45-803, 47-1303, 47-1304, 47-1306, 47-1307, and 47-1312.

Effect of amendments. — D.C. Law 11-198 inserted “conducted pursuant to § 47-1301” in the fourth sentence in (a).

Temporary amendment of section. — D.C. Law 11-226 inserted “conducted pursuant to § 47-1301” in the fourth sentence in (a).

Section 1001 of D.C. Law 11-226 provides that Titles I, II, III, V, and VI of the act shall apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 203 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 203 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 203 of the Fiscal year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 11-302 provides for the application of the act.

Section 1001 of D.C. Act 11-429 provides for the application of the act.

Section 1001 of D.C. Act 12-2 provides for the application of the act.

Legislative history of Law 7-177. — Law 7-177 was introduced in Council and assigned Bill No. 7-208, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on August 2, 1988, it was assigned Act No. 7-237 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-136. — See note to § 43-1651.

Legislative history of Law 11-198. — Law 11-198, the “Fiscal Year 1997 Budget Support Act of 1996,” was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective April 9, 1997.

Legislative history of Law 11-226. — Law 11-226, the “Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996,” was intro-

duced in Council and assigned Bill No. 11-896. The Bill was adopted on first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on December 4, 1996, it was assigned Act No. 11-453 and transmitted to both Houses of Congress for its review. D.C. Law 11-226 became effective on April 9, 1997.

Application of provisions of Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Mayor authorized to issue rules. — Section 13 of D.C. Law 7-177 provided that the Mayor shall issue rules to implement the provisions of the act.

See note to § 43-1527.

This section represents valid exercise of police power. *Friedman v. District of Columbia*, App. D.C., 172 A.2d 562 (1961).

Retroactive application of section. — This section did not operate to create a retroactive lien for water furnished prior to its effective date or to compel owner to pay obligation of earlier owner for water charges before its effective date. *Friedman v. District of Columbia*, App. D.C., 172 A.2d 562 (1961).

Authority of District. — There is no statutory authority that explicitly compels the District to shut off water supply for failure to pay

water charges; such authority as is statutorily granted is discretionary only. *Masszonias v. Washington*, 321 F. Supp. 965 (D.D.C. 1971), appeal dismissed, 476 F.2d 915 (D.C. Cir. 1973).

Liability of tenants for landlord's failure to pay water bill. — Where low income tenants have paid rent to landlord whom they have relied upon to pay water bills and who has then abandoned the building and its past due water bill, and relocation of those tenants is difficult, if not impossible, due to the critical housing shortage existing in the District of Columbia, it would be an abuse of discretion for the District of Columbia to shut off the water and thereby force the tenants to pay that for which they may not be liable. *Masszonias v. Washington*, 321 F. Supp. 965 (D.D.C. 1971), appeal dismissed, 476 F.2d 915 (D.C. Cir. 1973).

Sale of property to recover charges. — A tax sale purchaser has no remedy other than the statutory remedy of a refund with interest even when the District negligently allows redemption after the statutory redemption period has run; any claim for relief outside the statutory remedy against the District must lie entirely against the redeeming property owner or lien holders. *Stuart v. District of Columbia*, App. D.C., 694 A.2d 49 (1997).

Cited in *District of Columbia v. Franklin Inv. Co.*, App. D.C., 404 A.2d 536 (1979).

§ 43-1530. Remedies not exclusive.

The remedies set forth in §§ 43-1527, 43-1528, and 43-1529 are hereby declared to be cumulative and not exclusive. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 105; 1973 Ed., § 43-1521d.)

Cross references. — As to charges for overdue bills and enforcement of liens arising from sanitary sewage service, see § 43-1610.

Section references. — This section is referred to in § 43-1610.

§ 43-1531. Water rates not to be a source of revenue.

The water rates levied in the District of Columbia shall never be a source of revenue other than as a means of keeping up to said District a supply of water but shall constitute a fund exclusively for the maintenance, management, and repair of the system of water distribution. (R.S., D.C., § 198; July 12, 1876, 19 Stat. 87, ch. 180, § 18; Feb. 25, 1885, 23 Stat. 319, ch. 145; 1973 Ed., § 43-1522.)

Fact that District is not permitted to make profit on water sold does not make function a purely governmental one, such as providing police force for protection of all, and District of Columbia could be held liable for negligent operation of motor vehicle by employee of District government in connection

with installation of water mains. *Scull v. District of Columbia*, 250 F.2d 767 (D.C. Cir. 1957), cert. denied, 356 U.S. 920, 78 S. Ct. 703, 2 L. Ed. 2d 715 (1958).

Cited in *Apartment & Office Bldg. Ass'n v. District of Columbia*, App. D.C., 415 A.2d 797 (1980).

§ 43-1532. Payment of water tax into General Fund.

Repealed. Sept. 10, 1992, D.C. Law 9-145, § 113(d), 39 DCR 4895.

Legislative history of Law 9-134. — See note to § 43-1524.

Legislative history of Law 9-145. — See note to § 43-1524.

§ 43-1533. Payment of water rents from Washington Aqueduct into General Fund.

All water rents derived from the Washington Aqueduct shall be paid into the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975. (R.S., D.C., § 217; 1973 Ed., § 43-1524; Jan. 22, 1976, D.C. Law 1-42, § 3(e), 22 DCR 6313.)

Cross references. — As to establishment of General Fund, see § 47-131.

Legislative history of Law 1-42. — See note to § 43-1532.

§ 43-1534. Fireplug tax — Levy permitted.

To aid in the erection, maintenance, and efficiency of fireplugs, a special annual tax may be levied on all buildings in the City of Washington within 500 feet of any main water pipe, into which, or the premises connected therewith, the water has not been introduced, and the owners or occupants of which do not pay any annual water rate in accordance with law. (R.S., D.C., § 205; June 17, 1890, 26 Stat. 159, ch. 428; 1973 Ed., § 43-1525.)

§ 43-1535. Same — Rates.

The fireplug tax shall be levied with reference to the value of the building so taxed, and shall not be more than \$5 nor less than \$1 per year. (R.S., D.C., § 206; 1973 Ed., § 43-1526.)

§ 43-1536. Same — Cessation upon introduction of water.

Whenever the water is introduced, in conformity with law, into any building or premises, the fireplug tax thereon shall cease. (R.S., D.C., § 207; 1973 Ed., § 43-1527.)

§ 43-1537. Same — Levy upon discontinuance of water service.

Whenever water is discontinued from any building or premises into which it has been introduced, such building shall be subject to the fireplug tax from the date of the discontinuance of the water. (R.S., D.C., § 208; 1973 Ed., § 43-1528.)

§ 43-1538. Water not to be diverted beyond District.

Except as provided in §§ 43-1539 and 43-1540 no portion of the water conveyed or to be conveyed through or by means of the Washington Aqueduct,

or any appurtenance thereof, shall be diverted to the supply or use of any building, premises or establishment located outside of the limits of the District of Columbia. (Mar. 3, 1893, 27 Stat. 544, ch. 199; 1973 Ed., § 43-1529.)

§ 43-1539. Delivery of water — Nearby Maryland; contract.

For the protection of the health of the residents of the District of Columbia and the employees of the United States government residing in Maryland near the District of Columbia boundary, the Mayor of the District of Columbia, upon the request of the Washington Suburban Sanitary Commission, a body corporate, established by Chapter 313 of the Acts of 1916 of the State of Maryland, or upon the request of its legally appointed successor, is authorized to deliver water from the water supply system of the District of Columbia to said Washington Suburban Sanitary Commission or its successor for distribution to territory in Maryland within the Washington Suburban Sanitary District as designated in the aforesaid act, or any amendment thereto, and to connect District of Columbia water mains with water mains in the state of Maryland at such points at or near the District of Columbia line as may be agreed upon from time to time by the Mayor of the District of Columbia and the Washington Suburban Sanitary Commission, under the conditions hereinafter named, namely:

(1) That before such connections shall be made the said Washington Suburban Sanitary Commission or its legally appointed successor shall secure authority from the legislature of the State of Maryland to enter into an agreement with the said Mayor of the District of Columbia outlining the conditions under which the service is to be rendered.

(2) The agreement between the Mayor of the District of Columbia and the said Washington Suburban Sanitary Commission or its legally appointed successor shall provide, among other things:

(A) That the meters on each of said connections shall be located within the District of Columbia and shall remain under the jurisdiction of the Mayor of the District of Columbia;

(B) The rates at which water will be furnished, said rates to be based on the actual cost to the United States and the District of Columbia of delivering water to the points designated above, including an interest charge at 4% per annum and the cost of any payment required by § 113 of the Omnibus Budget Support Act of 1992 and a suitable allowance for depreciation;

(C) That payments for water so furnished shall be made through the Collector of Taxes of the District of Columbia at such times as the Mayor of the District of Columbia may direct, said payments to be deposited in the Treasury of the United States as other water rents collected in the District of Columbia are deposited;

(D) That at no time shall the amount of water furnished the said Washington Suburban Sanitary Commission or its successor exceed the amount that can be spared without jeopardizing the interests of the United States or of the District of Columbia;

(E) That the Mayor of the District of Columbia shall have at all times the right to investigate the distribution system in Maryland, and if, in his opinion, there is a wastage of water he shall have the right to curtail the supply to said sanitary district to the amount of such wastage. (Mar. 3, 1917, 39 Stat. 1043, ch. 160; June 30, 1930, 46 Stat. 838, ch. 764; Apr. 14, 1932, 47 Stat. 79, ch. 100; 1973 Ed., § 43-1530; July 23, 1992, D.C. Law 9-134, § 112(f), 39 DCR 4066; Sept. 10, 1992, D.C. Law 9-145, § 113(c), 39 DCR 4895.)

Section references. — This section is referred to in § 43-1538.

Legislative history of Law 9-134. — See note to § 43-1524.

Legislative history of Law 9-145. — See note to § 43-1524.

References in text. — The “Omnibus Budget Support Act of 1992,” referred to in (2)(B), is D.C. Law 9-145.

Restriction on use of funds. — Section 136 of Pub. L. 102-382, 106 Stat. 1435, the District of Columbia Appropriations Act, 1993, provided that none of the funds made available in this Act may be used by the District of Columbia to impose, implement, collect, administer, transfer, or enforce a payment in lieu of taxes on the Water and Sewer Utility Administration that would increase payments required of suburban jurisdictions in Maryland or Virginia under the Blue Plains Intermunicipal Agreement of 1985.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Collector of Taxes abolished. —

The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner’s Order No. 69-96, dated March 7, 1969.

§ 43-1540. Same — Arlington County, Virginia.

The Secretary of the Army is hereby authorized, in his discretion and subject to the approval of the Chief of Engineers, upon the request of the board of supervisors of Arlington County, Virginia, to permit the delivery of water from the federal water supply pumping station at the Dalecarlia Reservoir to the

Arlington County sanitary district, created by an act of the General Assembly of the State of Virginia, of March 15, 1922, and to connect the force main of said pumping station with the water main in Arlington County at the southerly end of the Chain Bridge; provided, that all expenses of installing said connection and its appurtenances and any subsequent changes therein shall be borne by said Arlington County, which shall pay such charges for the use of such water as may be determined from time to time in advance by the Secretary of the Army, the payments to be made at such time and under such regulations as the Secretary of the Army may prescribe, all payments for the use of water to be deposited in the Treasury of the United States as other water rents collected in the District of Columbia are deposited; and provided further, that the Secretary of the Army may revoke at any time any permit for the use of said water that may have been granted. (Apr. 14, 1926, 44 Stat. 251, ch. 140, § 1; 1973 Ed., § 43-1531.)

Section references. — This section is referred to in § 43-1538.

References in text. — The title of Secretary of War was changed to Secretary of the Army by § 205(a) of the Act of July 26, 1947, 61 Stat. 501, ch. 343. Section 205(a) of the Act of July 26, 1947, was repealed by § 53 of the Act of August 10, 1956, 70A Stat. 641, ch. 1041.

Restriction on use of funds. — Section 136 of Pub. L. 102-382, 106 Stat. 1435, the District

of Columbia Appropriations Act, 1993, provided that none of the funds made available in this Act may be used by the District of Columbia to impose, implement, collect, administer, transfer, or enforce a payment in lieu of taxes on the Water and Sewer Utility Administration that would increase payments required of suburban jurisdictions in Maryland or Virginia under the Blue Plains Intermunicipal Agreement of 1985.

§ 43-1541. Same — Falls Church, Virginia, and adjacent areas; installation expenses; payments; revocation of permit.

The Secretary of the Army, on the recommendation of the Chief of Engineers, United States Army, and the Mayor of the District of Columbia, is hereby authorized in his discretion, upon request of the City Council of the City of Falls Church, Fairfax County, Virginia, or any other competent state or local authority in the Washington metropolitan area in Virginia, to permit the delivery of water from the District of Columbia water system at the Dalecarlia Filtration Plant, or at other points on said water system to the Falls Church water system for the purpose of supplying water for the use of said City and such adjacent areas as are now or shall hereafter be served by the water system of said City; or to any other competent state or local authority in said metropolitan area in Virginia. The Secretary of the Army is hereby further authorized, in his discretion and upon the recommendation of the Chief of Engineers, and said Mayor, to permit the delivery of such water through the water mains of Arlington County by a connection to Arlington mains at the southerly end of Chain Bridge, or to make connections with the Arlington County water system at one or more points along the boundary line of Arlington County; provided, that all expense of installing any such connection or connections or other appurtenances and any subsequent changes therein shall be borne by said City of Falls Church, or such other communities of said metropolitan area requesting such services; provided further, that all pay-

ments for water taken directly from the mains of the water supply system of the District of Columbia at the Dalecarlia Filtration Plant, or from other points on said water system, shall be made at such time and in such manner as the Secretary of the Army and said Mayor may prescribe; all such payments to be deposited in the Treasury of the United States as other water rents now collected in the District of Columbia are now deposited, but for water as may be supplied through the water mains of Arlington County, as hereinabove authorized, such payments shall be made by said Arlington County in the same manner as payments for water supplied for the use of said Arlington County; provided further, that payment for water delivered to communities in said metropolitan area from or through the water mains of Arlington County shall be made to said County as may be mutually arranged on an equitable basis and as approved by the Secretary of the Army and said Mayor; and provided further, that the Secretary of the Army, directly or upon the request of the Mayor, may revoke at any time any permit for the use of said water that may have been granted. (June 26, 1947, 61 Stat. 181, ch. 149, § 1; 1973 Ed., § 43-1531a.)

Section references. — This section is referred to in § 43-1543.

References in text. — The title of Secretary of War was changed to Secretary of the Army by § 205(a) of the Act of July 26, 1947, 61 Stat. 501, ch. 343. Section 205(a) of the Act of July 26, 1947, was repealed by § 53 of the Act of August 10, 1956, 70A Stat. 641, ch. 1041.

Restriction on use of funds. — Section 136 of Pub. L. 102-382, 106 Stat. 1435, the District of Columbia Appropriations Act, 1993, provided that none of the funds made available in this Act may be used by the District of Columbia to impose, implement, collect, administer, transfer, or enforce a payment in lieu of taxes on the Water and Sewer Utility Administration that would increase payments required of suburban jurisdictions in Maryland or Virginia under the Blue Plains Intermunicipal Agreement of 1985.

Change in government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1542. Investigation of distribution systems outside District of Columbia.

The Secretary of the Army, through the Chief of Engineers, shall have the right at all times to investigate the distribution systems of any community outside the District of Columbia supplied with water from the said District of Columbia water system and if, in his opinion, there is an excessive wastage of water, he shall have the right to curtail the supply to said communities to the amount of such wastage. (June 26, 1947, 61 Stat. 182, ch. 149, § 2; 1973 Ed., § 43-1531b.)

References in text. — The title of Secretary of War was changed to Secretary of the Army by § 205(a) of the Act of July 26, 1947, 61 Stat. 501, ch. 343. Section 205(a) of the Act of July

26, 1947, was repealed by § 53 of the Act of August 10, 1956, 70A Stat. 641, ch. 1041.

§ 43-1543. Acquiring of lands for pipelines authorized.

The Secretary of the Army or the said Mayor of the District of Columbia is hereby authorized to acquire by purchase or condemnation all necessary lands, easements, and rights-of-way for pipelines within the District of Columbia, needed for the purposes of § 43-1541. (June 26, 1947, 61 Stat. 182, ch. 149, § 3; 1973 Ed., § 43-1531c.)

References in text. — The title of Secretary of War was changed to Secretary of the Army by § 205(a) of the Act of July 26, 1947, 61 Stat. 501, ch. 343. Section 205(a) of the Act of July 26, 1947, was repealed by § 53 of the Act of August 10, 1956, 70A Stat. 641, ch. 1041.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1544. Acquisition of land and right-of-way for pipelines.

The Secretary of the Army is hereby authorized to acquire by purchase or condemnation all necessary lands, easements, and rights-of-way for pipelines within the District of Columbia to connect the force main of said pumping station with the water main in Arlington County as herein authorized. (Apr. 14, 1926, 44 Stat. 252, ch. 140, § 2; 1973 Ed., § 43-1532.)

Cross references. — As to condemnation, see Chapter 13 of Title 16.

References in text. — The title of Secretary of War was changed to Secretary of the Army by

§ 205(a) of the Act of July 26, 1947, 61 Stat. 501, ch. 343. Section 205(a) of the Act of July 26, 1947, was repealed by § 53 of the Act of August 10, 1956, 70A Stat. 641, ch. 1041.

§ 43-1545. Potomac water to be furnished to charitable institutions without charge [Repeal effective 90 days after meeting of Board].

The Mayor of the District of Columbia is authorized to furnish Potomac water without charge to charitable institutions and such institutions as receive annual appropriations from Congress, to an amount to be fixed in each case by the said Mayor, not to exceed a rate of 100 gallons per day for each inmate of said institutions; and for all water used beyond such an amount, to be ascertained by water meters installed and maintained at the expense of the consumer, the institution shall be charged at the prevailing rate for the use of water in the District of Columbia, which shall be collected in the manner

prescribed for the collection of water rents. The said Mayor is further authorized to furnish Potomac water without charge to churches to an amount to be fixed in each case by the said Mayor, and any amount used in excess of the amount allowed, to be ascertained in the manner aforesaid, shall be charged and collected as hereinbefore described. For the purposes of this section a charitable institution is one whose objects are primarily eleemosynary; and nothing herein contained shall be so construed as to include educational institutions other than charity schools wholly supported by voluntary contributions or institutions supported wholly or in part by Congressional appropriation. (Feb. 23, 1905, 33 Stat. 742, ch. 742, § 1; 1973 Ed., § 43-1533.)

Legislative history of Law 11-111. — See note to § 43-1522.

Repeal effective 90 days after meeting of Board. — Section 306 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1546. Unlawful tapping of water pipe; penalty.

The unlawful tapping of any water pipe laid down in the District by authority of the United States is a misdemeanor and an indictable offense; and any person convicted of such offense in the criminal court of the District shall be subject to a fine not exceeding \$500, or to imprisonment for a term not exceeding 1 year. (R.S., D.C., § 218; 1973 Ed., § 43-1534.)

Cross references. — As to unauthorized tapping or opening of mains or pipes laid by the federal government, see § 43-1550.

Section references. — This section is referred to in § 43-1547.

§ 43-1547. Notification of violations.

It is the special duty of the Chief of Engineers to bring to the notice of the United States Attorney for the District of Columbia, or to the grand jury, any infraction of § 43-1546. (R.S., D.C., § 219; 1973 Ed., § 43-1535.)

§ 43-1548. Penalty for damaging or defacing water pipes.

Every person who maliciously breaks, injures, defaces, or destroys any main or pipe, bend, branch, valve, hydrant, service pipe, or any other fixture used for the distribution of water throughout the streets and avenues, or for its introduction into the houses, tenements, or buildings of the District of Columbia, shall be punishable by imprisonment in the District jail for not more

than 2 years. (R.S., D.C., § 220; Feb. 25, 1885, 23 Stat. 319, ch. 145; 1973 Ed., § 43-1536.)

§ 43-1549. Main pipes; laying for use of public buildings.

No greater number of main pipes of the Washington Aqueduct shall be laid at the expense of the United States than are sufficient to furnish the public buildings, offices, and grounds with the necessary supply of water. The cost of any main pipe, for the supply of water to the inhabitants of Washington, must be paid by the District of Columbia, in the manner provided by law. (R.S., U.S., § 1805; Feb. 11, 1895, 28 Stat. 650, ch. 79; 1973 Ed., § 43-1537.)

§ 43-1550. Unauthorized opening of mains or pipes.

No person, unless by consent of the Chief of Engineers, shall tap or open the mains or pipes laid or hereafter to be laid by the United States, under a penalty of not less than \$50 nor more than \$500. (R.S., U.S., § 1803; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; 1973 Ed., § 43-1538.)

§ 43-1551. “Mayor,” “District of Columbia water system” defined.

As used in § 43-1540, unless the context otherwise requires:

(1) “Mayor” means the Mayor of the District of Columbia.

(2) “District of Columbia water system” or “water system” means any and all of the facilities used or to be used for the supply of raw or partly purified water wherever situated and all of the facilities used or to be used for the distribution of purified water situated within the District of Columbia which are operated by the Department of Environmental Services or the Washington Aqueduct Division of the Washington District of the Corps of Engineers, Department of the Army, or both. (June 2, 1950, 64 Stat. 195, ch. 218, § 1; 1973 Ed., § 43-1539.)

References in text. — Section 43-1540, referred to in the introductory language of this section, was repealed by the Act of December 24, 1974, 87 Stat. 832, Pub. L. 93-198, § 243(b).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Gov-

ernmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions of the Department of Environmental Services were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 43-1552. Water and water service supplied for the use of the government of the United States.

(a) All water and water services furnished from the District water supply system through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, situated in the District, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at the rates for the furnishing and readiness to furnish water applicable to other water consumers in the District. All water and water services furnished from the District water supply system through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, situated outside the District in the States of Maryland or Virginia, except water and water services furnished to the United States for the maintenance, operation, and extension of the water system, shall be paid for at rates comparable to those which may be in effect and charged to state, municipal, or county agencies or other political authorities or jurisdictions within the respective states wherein said federal facilities may be situated for similar water service from the District water supply system; provided, that conditions as to water pressure, quantity, rates of demand, and points of connection available or permissible at any time for service outside the District, if any, shall be fixed by the Mayor of the District of Columbia so as to fully protect the prior interests of water consumers within the District; provided further, that as a condition of service, at each point of federal connection to the water system of the District for service outside the District there shall be installed and maintained at the expense of the department, independent establishment, or agency of the United States which is to use water therefrom a suitable meter or meters and incidental vaults, valves, piping and recording devices, and such other equipment as the Mayor in his discretion deems necessary to control and record the use of water through each such connection. Payment shall be made as provided in subsection (b) of this section. The provisions of §§ 43-1527, 43-1528, and 43-1529, relating, respectively, to enforcement of payment for water charges by penalty charge for late payment, by shutting off of the water supply for nonpayment, and the imposition of lien and sale of property, shall not apply in any case where water or water service is furnished to a building, establishment, or other place owned by the government of the United States and occupied by a department, independent establishment, or agency thereof.

(b) For the purpose of effectuating the provisions of subsection (a) of this section, there shall be included annually in the budget estimates of the Mayor (beginning with the budget estimates for the fiscal year beginning October 1, 1977) the estimated value, as determined by the Mayor, of the water and water services to be furnished to the United States during the fiscal year for which the budget estimates are prepared, based on the rates for water and water services that will be in effect during such fiscal year. There shall be appropriated annually to the District, subject to subsequent adjustment within 2 fiscal years, out of any money in the Treasury not otherwise appropriated, a sum

corresponding to the estimated value of water and water services to be furnished to the United States; provided, that nothing contained in this subsection shall be deemed to relieve the United States of its obligation to make payments to the District for water and water services furnished prior to October 1, 1977; provided further, that notwithstanding any other provision of law, outstanding payments for water and water services furnished by the District prior to October 1, 1977, shall be advanced and paid, subject to subsequent adjustment within 2 fiscal years, to the District by the United States on October 1, 1977. (May 18, 1954, 68 Stat. 102, ch. 218, title I, § 106; Sept. 30, 1966, 80 Stat. 857, Pub. L. 89-610, title V, § 503; 1973 Ed., § 43-1541; Oct. 6, 1977, 91 Stat. 1093, Pub. L. 95-122, § 1(1).)

Cross references. — As to deposit of water payments in General Fund, see §§ 43-1532 and 47-131.

Section references. — This section is referred to in § 47-131.

Apportionment of appropriations. — Section 133 of Pub. L. 101-518, 104 Stat. 2237, the District of Columbia Appropriations Act, 1991, amended section 133(e) of the District of Columbia Appropriations Act, 1990, as amended, by striking “December 31, 1990” and inserting “December 31, 1991.”

Section 129 of Pub. L. 102-111, 105 Stat. 570, the District of Columbia Appropriations Act, 1992, amended section 133(e) of the District of Columbia Appropriations Act, 1990, as amended, by striking “December 31, 1991” and inserting “December 31, 1992.”

Section 130 of Pub. L. 102-382, 106 Stat. 1434, the District of Columbia Appropriations Act, 1993, amended section 133(e) of the District of Columbia Appropriations Act, 1990, as amended, by striking “December 31, 1992” and inserting “December 31, 1993.”

Public Law 102-382, 106 Stat. 1429, the District of Columbia Appropriations Act, 1993, provided for the Water and Sewer Enterprise Fund, \$251,630,000, of which \$39,602,000 shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects.

For construction projects, \$45,908,000, as authorized by § 43-1512 et seq.: Provided, That the requirements and restrictions that are applicable to general fund capital improvement projects and set forth in this Act under the Capital Outlay appropriation title shall apply to projects approved under this appropriation title: Provided further, That \$22,705,000 in water and sewer enterprise fund operating revenues shall be available for pay-as-you-go capital projects.

Section 134 of § 1(c) of Pub. L. 100-202, the

District of Columbia Appropriations Act, 1988, provided that none of the funds available to the District of Columbia government shall be used for any purpose involved in billing individual agencies or establishments for water and water services and sanitary sewer services traditionally funded under the account “Federal Payment for Water and Sewer Services” unless and until existing statutes (sections 106 and 212 of the District of Columbia Public Works Act of 1954, as amended, Public Law 364, approved May 18, 1954) are amended to specifically provide for such billing.

Section 128 of Pub. L. 103-127, 107 Stat. 1347, the District of Columbia Appropriations Act, 1994, amended section 133(e) of the District of Columbia Appropriations Act, 1990, as amended, by substituting “December 31, 1994” for “December 31, 1993.”

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1553. Contract authority of Mayor regarding costs of Potomac River reservoir; contract payments; appropriations.

(a) The Mayor is authorized to contract with the United States, any state in the Potomac River basin, any agency or political subdivision thereof, and any other competent state or local authority, with respect to the payment by the District to the United States, either directly or indirectly, of the District's equitable share of any part or parts of the non-federal portion of the costs of any reservoirs authorized by the Congress for construction on the Potomac River or any of its tributaries. Every such contract may contain such provisions as the Mayor may deem necessary or appropriate.

(b) Unless hereafter otherwise provided by legislation enacted by the Council, all payments made by the District and all moneys received by the District pursuant to any contract made under the authority of this Act shall be paid from, or be deposited in, a fund designated by the Mayor. Charges for water delivered from the District water system for use outside the District may be adjusted to reflect the portions of any payments made by the District under contracts authorized by this Act which are equitably attributable to such use outside the District.

(c) There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section. (Mar. 24, 1972, 86 Stat. 113, Pub. L. 92-263, §§ 1-3; 1973 Ed., §§ 43-1542, 43-1542a; Dec. 24, 1973, 87 Stat. 808, Pub. L. 93-198, title IV, § 488.)

Cross references. — As to payment of fees into General Fund, see § 43-1532.

As to delivery of water to Maryland and Virginia, see §§ 43-1539, 43-1540 and 43-1541.

References in text. — "This Act," referred to in subsection (b) of this section, is the District of Columbia Self-Government and Governmental Reorganization Act.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Definitions applicable. — The definitions in § 1-202 apply to this section.

§ 43-1554. Acquisition of land for Washington Aqueduct.

Appropriations are hereby authorized for the acquisition, by gift, dedication, exchange, purchase, or condemnation, of land or rights in or on land or easements therein for the Washington Aqueduct by the Chief of Engineers, Corps of Engineers, United States Army, or his designated agents. (1973 Ed., § 43-1543; Oct. 26, 1973, 87 Stat. 507, Pub. L. 93-140, § 18.)

CHAPTER 16. SANITARY SEWAGE WORKS.

Subchapter I. D.C. Sanitary Sewage Works.

Sec.

- 43-1601. Definitions.
- 43-1602. Use of the General Fund for sanitary sewage works.
- 43-1603. Advances for sanitary sewage works; reimbursement for amounts advanced.
- 43-1604. [Repealed].
- 43-1605. [Repealed].
- 43-1605.1. [Repealed].
- 43-1605.2. [Repealed].
- 43-1605.3. [Repealed].
- 43-1605.4. [Repealed].
- 43-1605.5. [Repealed].
- 43-1606. [Repealed].
- 43-1607. Methods of determination of sanitary sewer service charges.
- 43-1608. Persons obligated to pay sanitary sewer service charge.
- 43-1609. Meters and measuring devices; maintenance and repairs.
- 43-1610. Additional charge for overdue bills; enforcement of lien.

Sec.

- 43-1611. Sanitary sewer service charges for churches and institutions.
- 43-1612. Sanitary sewer service charges for United States government.
- 43-1613. Use of funds from General Fund for certain sewers.
- 43-1614. Rules and regulations.
- 43-1615. Agreements with Maryland and Virginia.

Subchapter II. Dulles International Airport Sanitary Sewer

- 43-1621. Commissioner authorized to develop plan for interceptor and sewer line.
- 43-1622. Potomac interceptor — Plans, construction, operation, and maintenance; charges for use.
- 43-1623. Same — Appropriations.
- 43-1624. Same — Acquisition of land in Maryland or Virginia; transfer of land from department or agency of United States.

*Subchapter I. D.C. Sanitary Sewage Works.***§ 43-1601. Definitions.**

For the purposes of this subchapter:

- (1) The term “sanitary sewage” means:
 - (A) Domestic sewage with storm and surface water limited;
 - (B) Sewage discharging from sanitary conveniences;
 - (C) Commercial or industrial wastes; and
 - (D) Water supply after it has been used.
- (2) The term “stormwater sewage” means liquid flowing in sewers resulting directly from precipitation.
- (3) The term “combined sewage” means sewage containing both sanitary sewage and stormwater sewage.
- (4) The term “sewer” means a pipe or conduit carrying sewage.
- (5) The term “sanitary sewer” means a sewer which carries sanitary sewage.
- (6) The term “stormwater sewer” means a sewer which carries stormwater sewage.
- (7) The term “combined sewer” means a sewer which carries both sanitary sewage and stormwater sewage.
- (8) The term “sanitary sewage works” means a system of sanitary and combined sewers, appurtenances, pumping stations, and treatment works for conveying, treating, and disposing of sanitary sewage.

(9) The term “stormwater sewer system” means a system of sewers, appurtenances, and pumping stations for conveying and disposing of stormwater sewage.

(10) The term “combined sewer system” means a system of sewers and appurtenances conveying both sanitary sewage and stormwater sewage. (May 18, 1954, 68 Stat. 104, ch. 218, title II, § 201; 1973 Ed., § 43-1601.)

§ 43-1602. Use of the General Fund for sanitary sewage works.

Subject to appropriations, amounts in the General Fund of the District of Columbia (including any special account therein) as established by the Revenue Funds Availability Act of 1975 shall be available for use by or under the direction and control of the Mayor of the District of Columbia for:

(1) The construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District, including all expenses;

(2) Payment of a portion of such administrative expenses as may not be wholly allocated to the sanitary sewage works or to any other sewage works of the District, but which expenses are incurred in connection with the operation of the sanitary sewage works and either or both the stormwater sewer system and the combined sewer system. The portion of such expenses to be paid from the General Fund of the District of Columbia (including any special account therein) shall be fixed from time to time by the Mayor at such a percentage of the total of such expenses for the said sewer systems as the Mayor, in his discretion, may determine;

(3) Payment of such portion of all expenses for the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the combined sewer system of the District as the Mayor, in his discretion, determines to be attributable to the sanitary sewer function of such combined sewer system;

(4) Payment of the District’s contribution to the expenses of the Interstate Commission on the Potomac River basin;

(5) Payments by the District to agencies in the State of Maryland providing services to the District for conveying, treating, or disposing of sanitary sewage; provided, that the said fund shall not be available to pay the cost of providing sewage service to institutions of the District located in the State of Maryland;

(6) Payments to other funds of the District for such expenses or estimated expenses as are or may be incurred in the administration of this subchapter;

(7) Payment to the United States Treasury of the interest, in accordance with the provisions of this subchapter, on loans to the District for the purposes of this Act;

(8) Repayment to the United States Treasury of the principal amount of each loan made to the District in accordance with the provisions of this chapter, and of any advancements made to the District in accordance with the provisions of § 43-1603; and

(9) Refund of part or all of any sanitary sewer service charges erroneously paid; provided, that application for refund shall be made within 2 years after such erroneous payment. (May 18, 1954, 68 Stat. 104, ch. 218, title II, § 203; 1973 Ed., § 43-1603; Jan. 22, 1976, D.C. Law 1-42, § 3(f)(2), 22 DCR 6313.)

Cross references. — As to establishment of General Fund, see § 47-131.

Legislative history of Law 1-42. — See note to § 43-1532.

References in text. — “This Act,” referred to in paragraph (7) of this section, is the District of Columbia Public Works Act of 1954, 68 Stat. 104, ch. 218.

The Revenue Funds Availability Act of 1975, referred to in this section, is the Act of January 22, 1976, D.C. Law 1-42.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1603. Advances for sanitary sewage works; reimbursement for amounts advanced.

The Secretary of the Treasury, notwithstanding the provisions of the District of Columbia Appropriation Act, approved June 29, 1922 (42 Stat. 668), is authorized and directed to advance, on the requisition of the Mayor of the District of Columbia, made in the manner now prescribed by law, out of any money in the Treasury of the United States not otherwise appropriated, such sums as may be necessary, from time to time, to meet the expenses of the District in connection with the construction, operation, maintenance, expansion, relocation, replacement, renovation, and repair of the sanitary sewage works of the District, as authorized by Congress, and such amounts so advanced shall be reimbursed by the said Mayor to the Treasury out of money in the General Fund of the District of Columbia (including any special account therein). (May 18, 1954, 68 Stat. 105, ch. 218, title II, § 204; 1973 Ed., § 43-1604; Jan. 22, 1976, D.C. Law 1-42, § 3(f)(3), 22 DCR 6314.)

Cross references. — As to establishment of General Fund, see § 47-131.

Section references. — This section is referred to in § 43-1602.

Legislative history of Law 1-42. — See note to § 43-1532.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1604. Council authorized to establish charges for sanitary sewer service.

Repealed pursuant to § 303 of D.C. Law 11-111.

Legislative history of Law 11-111. — Law 11-111, the “Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996,” was introduced in Council and assigned Bill No. 11-102, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 7, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 31, 1996, it was assigned

Act No. 11-201 and transmitted to both Houses of Congress for its review. D.C. Law 11-111 became effective on April 18, 1996.

Repeal effective 90 days after meeting of Board. — Section 303 of D.C. Law 11-111 repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1605. Sanitary sewer service charge.

Repealed pursuant to § 305 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1604.

Repeal effective 90 days after meeting of Board. — Section 304 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1605.1. Nonprofit housing developments — Eligibility for rate reduction.

Repealed pursuant to § 305 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1604.

Repeal effective 90 days after meeting of Board. — Section 305 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1605.2. Same — Forgiveness of outstanding charges.

Repealed pursuant to § 305 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1604.

Repeal effective 90 days after meeting of Board. — Section 305 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1605.3. Same — Rules.

Repealed pursuant to § 305 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1604.

Repeal effective 90 days after meeting of Board. — Section 305 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1605.4. Same — Submission of willful false statement.

Repealed pursuant to § 305 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1604.

Repeal effective 90 days after meeting of Board. — Section 305 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1605.5. Same — Definitions.

Repealed pursuant to § 305 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1604.

Repeal effective 90 days after meeting of Board. — Section 305 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1606. Payment of sanitary sewer service charges.

Repealed pursuant to § 304 of D.C. Law 11-111.

Legislative history of Law 11-111. — See note to § 43-1604.

Repeal effective 90 days after meeting of Board. — Section 304 of D.C. Law 11-111

repealed this section. However, § 601 of D.C. Law 11-111 provided that Title III of the act shall apply 90 days after the initial meeting of the Board established by section 204 of the act.

§ 43-1607. Methods of determination of sanitary sewer service charges.

(a) The sanitary sewer service charges established under the authority of this subchapter shall be based on the water consumption of, and water service to, the properties served, and be determined by one of the following methods:

(1) Where water is supplied from the District water supply system at meter rates, the Council of the District of Columbia shall establish the sanitary sewer service charge as a percentage of the water charge applicable in the District.

(2) Where water is supplied from the District water supply system, which water is not measured by meter, but is supplied at special business and miscellaneous rates, the Council shall establish the sanitary sewer service charge at a percentage of such special business and miscellaneous rates.

(3) For any real property that discharges waste water into a District-owned sanitary sewer that derives from groundwater or cooling water, the real property owner shall pay a sanitary sewer service charge separate from any sanitary sewer service charge levied in paragraphs (1) and (2) of this subsection. The separate and additional sanitary sewer service charge shall apply to and be measured by the quantity of water that is derived from the groundwater or cooling water and is discharged into the District sanitary or combined sewer system. Unless the Mayor determines that it is not practicable, the owner of the real property shall install and maintain, at a location approved by the Mayor and without cost to the District, any sanitary meter or device necessary to measure the quantity of groundwater or cooling water discharged into the District's sanitary sewage works. The amount of the sanitary sewer service charge shall be set at the same rate as the rate paid by the owner of a metered building that receives water from the District water supply system.

(4) Wherever a property upon which a sanitary sewer service charge is imposed uses water from the water supply system of the District for an industrial or commercial purpose in such manner that the water so used is not discharged into the sanitary sewage works of the District, the quantity of water so used and not discharged into the sanitary sewage works of the District may be excluded in determining the sanitary sewer service charge on such property, if such exclusion is previously requested in writing by the owner or occupant thereof. Upon such request, the quantity of water so used and not discharged into the sanitary sewage works of the District shall be measured by a device or devices approved by the Mayor, installed and maintained without cost to the District, and the sanitary sewer service charge to be imposed on such property shall be the amount which would have been charged such property if the amount of water so used and not discharged into the sanitary sewage works of the District had not been included in the amount of water used by such property; provided, that all water from the water supply system of the District used by such property shall be paid for at established rates, whether or not such water is discharged into the sanitary sewage works of the District. Where in the opinion of the Mayor, it is not practicable to install a measuring device to determine continuously the quantity of water used for such industrial or commercial purposes and not discharged into the sanitary sewage works of the District, the Mayor shall determine periodically, in such manner and by such methods as the Mayor may prescribe, the quantity of water from the water supply system of the District discharged into the sanitary sewage works of the District, and the sanitary sewer service charge shall be based on such estimated quantity of water at the percentage authorized by this paragraph. Any dispute as to such estimated amount shall be decided by the Mayor and such decision shall be final; and in the event the owner or occupant fails to furnish and maintain such measuring devices or to facilitate the periodic determinations by the Mayor as prescribed herein, then the privilege of excluding some portion of the water used from the District water supply system from the charges for sanitary sewer service shall be forfeited and the charges for sanitary sewer service shall be based on the full amount of the water used from the District water supply system.

(b) Notwithstanding the provisions of subsection (a), the Council of the District of Columbia is authorized, in its discretion, from time to time to establish one or more sanitary sewer service charges at such amount as the Council, on the basis of a recommendation made by the Mayor, finds it necessary to meet the expense to the District of furnishing sanitary sewer services, including debt retirement. (May 18, 1954, 68 Stat. 106, ch. 218, title II, § 207; Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 502; Jan. 5, 1971, 84 Stat. 1931, Pub. L. 91-650, title I, § 105(b); 1973 Ed., § 43-1606; June 13, 1990, D.C. Law 8-136, § 2(d), 37 DCR 2620.)

Section references. — This section is referred to in § 43-1612.

Legislative history of Law 8-136. — See note to § 43-1651.

Change in government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (326) of Reorganization Plan No. 3 of 1967 (see

Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

Rates in excess of charges necessary to meet expense of services. — Where the challenging party did not specify in what respect rates were unreasonable but merely alleged that the challenged rates were unreasonable and arbitrary for the reason that they were in excess of charges necessary to meet the expense to the District of Columbia of furnishing such water and sewer services, the challenge to the rates did not rise to the level of affording protection against a motion for summary judgment. *Apartment & Office Bldg. Ass'n v. District of Columbia*, App. D.C., 415 A.2d 797 (1980).

§ 43-1608. Persons obligated to pay sanitary sewer service charge.

(a) The owner or occupant of each building, establishment, or other place in the District connected with any District sewer conducting sanitary sewage shall pay the sewer service charge authorized by this subchapter.

(b) If the sanitary sewer service charge imposed by this subchapter is based on a water charge any part of which is for a period beginning prior to the imposition of the sanitary sewer service charge and ending thereafter, the sanitary sewer service charge shall be prorated, on a monthly basis, on so much of such water charge as shall have accrued subsequent to August 1, 1954.

(c) In computing the charge for sanitary sewer service, if such charge is for a period beginning prior to a change in the established sanitary sewer service charge and ending thereafter, the charge shall be based on the rate in effect at the time the charge is rendered. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 208; Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 503; Jan. 5, 1971, 84 Stat. 1931, Pub. L. 91-650, title I, § 105(c); 1973 Ed., § 43-1607.)

Cross references. — As to statement of account upon change of ownership or occupancy, see § 43-1506.

§ 43-1609. Meters and measuring devices; maintenance and repairs.

(a) All meters or other measuring devices installed or required to be used under the provisions of this subchapter shall be under the control of the Mayor of the District of Columbia and the Council of the District of Columbia, who shall promulgate all regulations necessary in its judgment to effectuate the purposes of this subchapter. The owner or occupant of the property upon which any such measuring device is installed shall be responsible for its maintenance and safekeeping, and all repairs thereto shall be made at the owner's cost, whether such repairs are made necessary by ordinary wear and tear or other causes. Bills for such repairs, if made by the District, shall be due and payable when rendered, and the Mayor is authorized to provide for stopping the supply

of water to any building or establishment upon the failure to pay such charge for meter repairs.

(b) The Mayor shall impose a one-time charge of 10% for any sanitary meter service charge that remains unpaid for more than 30 days and a penalty of 1% per month compounded monthly for any sanitary meter repair service that remains unpaid for more than 60 days from the date the bill is rendered.

(c) In accordance with § 43-1529, the Mayor shall impose and enforce a continuing lien upon land and land improvements that are furnished sanitary meter services if any charges remain unpaid for more than 60 days from the date the bill for services is rendered.

(d) The Mayor, with prior written notice to the owner of the date and time of entry, and consistent with constitutional guidelines, may enter any building, establishment, or other premises to inspect, install, replace, read, or repair any sanitary meter required to be installed pursuant to the Public Works Act, or to investigate whether water derived from groundwater or cooling water is being discharged from the real property into a sanitary or combined sewer system. If the Mayor is unable to gain entry to the real property after 2 attempts, the Mayor shall notify the owner or occupant to contact the Department within 3 business days after notice is mailed to the owner. If the owner or occupant fails to contact the Department, it shall be presumed that the owner refuses to permit entry to the property and the Mayor may impose a penalty of \$100 and shut off the water supply to the real property. Upon the payment of the penalty of issuance of a final decision where the owner files a request for administrative review, the Mayor may restore the water supply. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 209; 1973 Ed., § 43-1608; June 13, 1990, D.C. Law 8-136, § 2(e), 37 DCR 2620.)

Section references. — This section is referred to in §§ 45-803, 47-1303, 47-1304, 47-1306, 47-1307, and 47-1312.

Legislative history of Law 8-136. — See note to § 43-1651.

References in text. — The “Public Works Act,” referred to in the first sentence of (d), is 68 Stat. 104, ch. 218.

Mayor authorized to issue rules. — See note to § 43-1607.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(327) of Reorganization Plan No. 3 of 1967 (see Reor-

ganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1610. Additional charge for overdue bills; enforcement of lien.

(a) The Council of the District of Columbia is hereby authorized, in order to encourage the prompt payment of the sanitary sewer service charge imposed by this subchapter, to impose an additional charge of 10% for any sanitary

sewer service charge remaining unpaid for more than 30 days, impose a penalty at the rate of 1% per month compounded monthly for any sanitary sewer service charge that remains unpaid for more than 60 days, and the Mayor of the District of Columbia is authorized to shut off the water of premises for which such charge is not paid within 30 days, and to have and enforce a continuing lien for such charge upon the land and any improvements thereon furnished such sanitary sewer service, in the same manner and to the same extent as if §§ 43-1527, 43-1528, 43-1529, and 43-1530 were set forth in this subchapter, and such sections shall be deemed to be applicable in every particular to the sanitary sewer service charge imposed by this subchapter; provided, that whenever said lien is enforced by the sale of property against which it has been assessed, so much of the proceeds of such sale as represents said unpaid sanitary sewer service charges shall be credited to the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975.

(b) The Mayor may defer or forgive, in whole or in part, any sanitary sewer service charges due the District of Columbia with respect to any qualified real property approved pursuant to § 5-1403. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 210; 1973 Ed., § 43-1609; Jan. 22, 1976, D.C. Law 1-42, § 3(f)(5), 22 DCR 6315; Oct. 20, 1988, D.C. Law 7-177, § 9(b), 35 DCR 6158; June 13, 1990, D.C. Law 8-136, § 2(f), 37 DCR 2620; May 18, 1993, D.C. Law 10-3, § 2(a), 40 DCR 2252; Nov. 25, 1993, D.C. Law 10-65, § 501(b), 40 DCR 7351.)

Cross references. — As to establishment of General Fund, see § 47-131.

Section references. — This section is referred to in §§ 5-1403, 43-1689, 45-803, 47-1303, 47-1304, 47-1306, 47-1307, and 47-1312.

Legislative history of Law 1-42. — See note to § 43-1532.

Legislative history of Law 7-177. — See note to § 43-1529.

Legislative history of Law 8-136. — See note to § 43-1651.

Legislative history of Law 10-3. — Law 10-3, the “D.C. Water and Sewer Operations Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-97. The Bill was adopted on first and second readings on February 2, 1993, and March 2, 1993, respectively. Signed by the Mayor on March 24, 1993, it was assigned Act No. 10-15 and transmitted to both Houses of Congress for its review. D.C. Law 10-3 became effective on May 18, 1993.

Legislative history of Law 10-65. — Law 10-65, the “Omnibus Spending Reduction Act of 1993,” was introduced in Council and assigned Bill No. 10-323, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 6, 1993, it was assigned Act No. 10-120 and transmitted to both Houses of Congress for its review. D.C. Law 10-65 became effective on November 25, 1993.

References in text. — The Revenue Funds Availability Act of 1975, referred to in subsection (a) of this section, is the Act of January 22, 1976, D.C. Law 1-42.

Mayor authorized to issue rules. — Section 13 of D.C. Law 7-177 provided that the Mayor shall issue rules to implement the provisions of the act.

See note to § 43-1607.

§ 43-1611. Sanitary sewer service charges for churches and institutions.

The sanitary sewer service charges applicable to such churches and institutions as may under existing law be furnished water without charge by the Mayor of the District of Columbia shall be predicated only on the quantity of water used in excess of the amount fixed by the Mayor in each case as to which

no water charge is made. (May 18, 1954, 68 Stat. 108, ch. 218, title II, § 211; 1973 Ed., § 43-1610.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1612. Sanitary sewer service charges for United States government.

(a) The sanitary sewer service charges prescribed herein shall be applicable to all sanitary sewer services furnished by the sanitary sewage works of the District through any connection thereto for direct use by the government of the United States or any department, independent establishment, or agency thereof, and such charges shall be predicated on the value of water and water services received by such facilities of the government of the United States or any department, independent establishment, or agency thereof from the District water supply system. Payment of the said sanitary sewer service charge shall be made as provided in subsection (b) of this section; provided, that the aggregate amount of such sanitary sewer service charge for each fiscal year shall be determined in the manner prescribed in § 43-1607; provided further, that the obligation to pay for sanitary sewer services received by the government of the United States or any department, independent establishment, or agency thereof shall be with respect to such service furnished on and after July 1, 1954.

(b) For the purpose of effectuating the provisions of subsection (a) of this section, there shall be included annually in the budget estimates of the Mayor (beginning with the budget estimates for the fiscal year beginning October 1, 1977) the estimated value, as determined by the Mayor, of the sanitary sewer services to be furnished to the United States during the fiscal year for which the budget estimates are prepared, based on the rates for sanitary sewer services that will be in effect during such fiscal year. There shall be appropriated annually to the District, subject to subsequent adjustment within 2 fiscal years, out of any money in the Treasury not otherwise appropriated, a sum corresponding to the estimated value of sanitary sewer services to be furnished to the United States; provided, that nothing contained in this subsection shall be deemed to relieve the United States of its obligation to make payments to the District for sanitary sewer services furnished prior to October 1, 1977; provided further, that, notwithstanding any other provisions of law, outstanding payments for sanitary sewer services furnished by the District prior to October 1, 1977, shall be advanced and paid, subject to subsequent adjustment within 2 fiscal years, to the District by the United States on October 1, 1977.

(May 18, 1954, 68 Stat. 108, ch. 218, title II, § 212; 1973 Ed., § 43-1611; Oct. 6, 1977, 91 Stat. 1093, Pub. L. 95-122, § 1(2).)

Cross references. — As to establishment of General Fund, see § 47-131.

Section references. — This section is referred to in § 47-131.

Apportionment of appropriations. — Public Law 102-382, 106 Stat. 1429, the District of Columbia Appropriations Act, 1993, provided for the Water and Sewer Enterprise Fund, \$251,630,000, of which \$39,602,000 shall be apportioned and payable to the debt service fund for repayment of loans and interest incurred for capital improvement projects.

For construction projects, \$45,908,000, as authorized by § 43-1512 et seq.: Provided, That the requirements and restrictions that are applicable to general fund capital improvement projects and set forth in this Act under the Capital Outlay appropriation title shall apply to projects approved under this appropriation title: Provided further, That \$22,705,000 in water and sewer enterprise fund operating revenues shall be available for pay-as-you-go capital projects.

Restrictions on use of Federal payment. — Section 134 of § 1(c) of Pub. L. 100-202, the District of Columbia Appropriations Act, 1988, provided that none of the funds available to the District of Columbia government shall be used for any purpose involved in billing individual agencies or establishments for water and water services and sanitary sewer services tradition-

ally funded under the account "Federal Payment for Water and Sewer Services" unless and until existing statutes (sections 106 and 212 of the District of Columbia Public Works Act of 1954, as amended, Public Law 364, approved May 18, 1954) are amended to specifically provide for such billing.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1613. Use of funds from General Fund for certain sewers.

Nothing herein contained shall prohibit the use of funds deposited to the credit of the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975 from being used for the construction, expansion, relocation, replacement, or renovation of any sewer in the combined sewer system of the District. (May 18, 1954, 68 Stat. 109, ch. 218, title II, § 215; 1973 Ed., § 43-1614; Jan. 22, 1976, D.C. Law 1-42, §§ 3(f)(6), 8, 22 DCR 6315, 6318.)

Cross references. — As to establishment of General Fund, see § 47-131.

Legislative history of Law 1-42. — See note to § 43-1532.

References in text. — The Revenue Funds Availability Act of 1975, referred to in this section, is the Act of January 22, 1976, D.C. Law 1-42.

§ 43-1614. Rules and regulations.

The Council of the District of Columbia is authorized to make rules and regulations to carry out the provisions of this subchapter. (May 18, 1954, 68 Stat. 120, ch. 218, title XVII, § 1701; 1973 Ed., § 43-1618.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(329) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of Commissioner as

provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1615. Agreements with Maryland and Virginia.

(a) The Mayor shall annually estimate the amount of the District's principal and interest expense which is required to service District obligations attributable to the Maryland and Virginia pro rata share of District sanitary sewage water works and other water pollution projects which provide service to the local jurisdictions in those states. Such amounts as determined by the Mayor pursuant to the agreements described in subsection (b) of this section shall be used to exclude the Maryland and Virginia share of pollution projects cost from the limitation on the District's capital project obligations as provided in § 47-313 (b).

(b) The Mayor shall enter into agreements with the states and local jurisdictions concerned for annual payments to the District of rates and charges for waste treatment services in accordance with the use and benefits made and derived from the operation of the said waste treatment facilities. Each such agreement shall require that the estimated amount of such rates and charges will be paid in advance, subject to adjustment after each year. Such rates and charges shall be sufficient to cover the cost of construction, interest on capital, operation and maintenance, and the necessary replacement of equipment during the useful life of the facility. (1973 Ed., § 43-1619; Dec. 24, 1973, 87 Stat. 808, Pub. L. 93-198, title IV, § 487.)

Restriction on use of funds. — Section 136 of Pub. L. 102-382, 106 Stat. 1435, the District of Columbia Appropriations Act, 1993, provided that none of the funds made available in this Act may be used by the District of Columbia to impose, implement, collect, administer, transfer, or enforce a payment in lieu of taxes on the

Water and Sewer Utility Administration that would increase payments required of suburban jurisdictions in Maryland or Virginia under the Blue Plains Intermunicipal Agreement of 1985.

Definitions applicable. — The definitions in § 1-202 apply to this section.

Subchapter II. Dulles International Airport Sanitary Sewer.

§ 43-1621. Commissioner authorized to develop plan for interceptor and sewer line.

The Mayor of the District of Columbia (or his designated agents), hereinafter called the Mayor, is hereby authorized to develop a plan for a sanitary interceptor and trunk sewer line to extend from Dulles International Airport to the District of Columbia system, hereinafter called the Potomac interceptor, which shall be of sufficient capacity to provide service for such airport and for

the expected community growth and development in the adjacent areas in the States of Maryland and Virginia. Such plan shall be developed in consultation with the National Capital Planning Commission and the Washington Metropolitan Council of Governments. (June 12, 1960, 74 Stat. 210, Pub. L. 86-515, § 1; 1973 Ed., § 43-1620.)

Section references. — This section is referred to in § 43-1622.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1622. Potomac interceptor — Plans, construction, operation, and maintenance; charges for use.

(a) Upon completion of the plan authorized by § 43-1621, the Mayor is authorized to provide for acquisition of rights-of-way, development of the detailed plans and specifications, and construction of the Potomac interceptor. When such interceptor is completed, it shall be operated and maintained by the Mayor as a part of a regional sanitary sewer system in cooperation with the proper authorities of the state and local jurisdictions concerned, under such regulations as may be prescribed by the Council of the District of Columbia.

(b) The Mayor is authorized to establish, by agreements with the appropriate agencies of the United States and with the proper authorities of the States and local jurisdictions concerned, charges for the use of the Potomac interceptor, which shall be based upon the costs of operation, maintenance, and amortization of the cost of all planning and construction (including acquisition of rights-of-way) of such interceptor, but which shall exclude such amount as may be appropriated pursuant to § 43-1623.

(c) The Mayor shall also charge all users of the Potomac interceptor, including any agency of the United States for carrying, treating, and disposing of sewage in the sewerage system of and within the District of Columbia consistently with the provisions of §§ 1-1120 and 1-1122. (June 12, 1960, 74 Stat. 211, Pub. L. 86-515, § 2; Sept. 11, 1967, 81 Stat. 224, Pub. L. 90-84, § 1; Dec. 15, 1971, 85 Stat. 654, Pub. L. 92-196, title V, § 502; 1973 Ed., § 43-1621; Jan. 22, 1976, D.C. Law 1-42, § 4(a), (b), 22 DCR 6316.)

Legislative history of Law 1-42. — See note to § 43-1532.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 402(330) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Gov-

ernmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 43-1623. Same — Appropriations.

For the purposes of carrying out the provisions of this subchapter, there is authorized to be appropriated, without fiscal year limitation, the sum of \$3,000,000, as the federal contribution toward the cost of planning, acquiring rights-of-way for, and constructing the Potomac interceptor. (June 12, 1960, 74 Stat. 210, Pub. L. 86-515, § 3; 1973 Ed., § 43-1622; Jan. 22, 1976, D.C. Law 1-42, § 4(c), 22 DCR 6316.)

Section references. — This section is referred to in § 43-1622.

Legislative history of Law 1-42. — See note to § 43-1532.

§ 43-1624. Same — Acquisition of land in Maryland or Virginia; transfer of land from department or agency of United States.

(a) The Mayor is authorized to acquire by purchase, condemnation, donation, or otherwise, any land or any interest in land located in Maryland or Virginia needed for construction and operation of the Potomac interceptor. Title to any such land or interest in land shall be taken in the name of the United States but shall be under the jurisdiction and control of the Mayor. For the purpose of acquiring any such land or any interest in land, the Mayor shall be deemed to be an officer of the government within the meaning and for the purposes of § 257 of Title 40, United States Code. The provisions of §§ 258a-258e and 258f of Title 40, United States Code, shall be applicable to any condemnation proceedings instituted pursuant to authority of this subchapter.

(b) When any land under the jurisdiction of any department or agency of the United States may be needed for the construction or operation of the Potomac interceptor, the appropriate officer of such department or agency is authorized, upon request of the Mayor, to transfer to the Mayor jurisdiction over so much of such land, or of such interests therein, as the Mayor shall request. (June 12, 1960, 74 Stat. 211, Pub. L. 86-515, § 5; 1973 Ed., § 43-1624.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 16A. WATER AND SEWER SERVICES AMNESTY
PROGRAM, RECEIVERSHIP PROVISION,
AND ADMINISTRATIVE REVIEW.

Sec.
43-1651. Definitions.
43-1652. Amnesty program.
43-1653. Opportunity for a tenant to receive
service in own name; payment
made by tenant.

Sec.
43-1654. Appointment of receiver.
43-1655. Administrative review.
43-1656. Rules.

§ 43-1651. Definitions.

For the purposes of this chapter, the term:

(1) "Owner" means any individual, corporation, association, or partnership listed as the legal title holder of record.

(2) "Rental property" means any real property consisting of one or more units that is leased or subleased to a person with the consent of the owner or the owner's agent, in consideration for rental payment.

(3) "Tenant" means any person who holds or possesses a habitation in subordination to the title of the owner of the premises in which the habitation is located, with the consent of the owner. (May 18, 1954, ch. 218, title XVIII, § 1801, as added June 13, 1990, D.C. Law 8-136, § 2(g), 37 DCR 2620.)

Legislative history of Law 8-136. — Law 8-136, the "District of Columbia Water and Sewer Operations Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-269, which was referred to the Committee on Public Works. The Bill was adopted on first

and second readings on March 27, 1990, and April 10, 1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act No. 8-192 and transmitted to both Houses of Congress for its review.

§ 43-1652. Amnesty program.

(a) There is established an amnesty program for any person liable for delinquent water and sanitary sewer services. The amnesty program shall permit the person to pay the full amount of outstanding charges for water and sanitary sewer services, without the imposition of any interest or fine otherwise provided by law.

(b) The amnesty program shall be available during the period from October 1, 1990, through December 31, 1990.

(c) A person may participate in the amnesty program by filing an application for amnesty with the Mayor that includes a copy of the person's most recent water and sanitary sewer service bill and a cashier's check, certified check, or money order in the amount of the bill as computed under subsection (a) of this section. The application for amnesty and the payment shall be filed in person or by mail postmarked no later than midnight on December 31, 1990. Cash payments may not be mailed for purposes of this section.

(d) Any person who files an application for amnesty under this section shall be precluded from filing a request for an administrative hearing pursuant to § 43-1655.

(e) The Mayor shall publicize, for 3 consecutive weeks, the terms and conditions of the amnesty program in at least 2 daily and 2 weekly newspapers published and circulated generally in the District of Columbia.

(f) Revenue received from the amnesty program shall be credited to the General Fund of the District of Columbia as established by § 47-131. (May 18, 1954, ch. 218, title XVIII, § 1802, as added June 13, 1990, D.C. Law 8-136, § 2(g), 37 DCR 2620.)

Legislative history of Law 8-136. — See note to § 43-1651.

§ 43-1653. Opportunity for a tenant to receive service in own name; payment made by tenant.

(a) If an owner of rental property or his or her agent is billed directly by the Department of Public Works ("Department") for water and sanitary sewer services provided to the rental property, and the owner or his or her agent fails to pay a delinquent account for the services, each tenant who resides in the affected property may receive water and sanitary sewer services in his or her own name without liability for the charges accrued while the services were billed directly to the owner of the rental property. A tenant shall receive water and sanitary sewer services in his or her own name only if it is deemed practicable by the Mayor in accordance with rules issued pursuant to § 43-1656.

(b) Any payment made by a tenant of rental property pursuant to subsection (a) of this section shall be deemed in lieu of an equal amount of rent and shall be deducted from any rent due and owing or to become due and owing to the owner, agent, lessor, or manager of the rental property.

(c) Nothing in this section shall prevent the Mayor from pursuing any other appropriate action or remedy at law or equity against an owner, agent, lessor, manager, or tenant of a rental property. (May 18, 1954, ch. 218, title XVIII, § 1803, as added June 13, 1990, D.C. Law 8-136, § 2(g), 37 DCR 2620.)

Section references. — This section is referred to in § 43-1654.

Legislative history of Law 8-136. — See note to § 43-1651.

§ 43-1654. Appointment of receiver.

(a)(1) Upon nonpayment of a delinquent account by the owner, agent, lessor, or manager of a rental property that is billed directly by the Department for water and sewer services, the Mayor or a tenant who resides in the affected rental property may petition the Superior Court of the District of Columbia ("Court") for appointment of a receiver for the rental payments in the same manner and to the same extent as for appointment of a receiver pursuant to § 43-543. The receiver may take any action deemed necessary to collect all rental payments from the tenants of the rental property. If the owner, agent, lessor, or manager also is indebted to an electric or gas company for utility services, the receiver may order the rent collected to be equitably apportioned between the Department and the electric or gas company.

(2)(A) If the delinquent account referred to in subsection (a)(1) of this section is an account for a master-meter apartment building, the Mayor may issue an order for the owner, agent, lessor, or manager, herein referred to as "the owner", to show cause why a receiver should not be appointed. The order may be issued by the Mayor upon a finding that:

(i) The delinquency has remained outstanding for at least 120 days;

(ii) The delinquency has not been timely contested pursuant to § 43-1655 and the rules issued by the Mayor; and

(iii) Termination of water and sewer services would create a health and safety hazard for tenants of the master-metered apartment building.

(B) The order to show cause, together with a copy of the findings, shall be served upon the owner at the owner's last known address and shall be posted in a conspicuous place upon the master-metered apartment building in question.

(C) A hearing on the order to show cause shall be held no later than 72 hours after the issuance of the order or the first business day thereafter. Upon a prima facie showing by affidavit, testimony, or otherwise, that delinquent water and sewer service bills on the master-metered apartment building remain unpaid, the Mayor shall immediately appoint a receiver to collect rents or payments for use and occupancy from the tenants thereof in order to pay current water and sewer service charges and to reduce the arrearage pursuant to subparagraph (F) of this paragraph. Prior to the hearing on the order to show cause, the owner may submit an answer to the order raising any grounds or defenses that the owner may have, except that any set-offs, counterclaims, or third-party claims shall not be grounds for the Mayor not to appoint a receiver.

(D) The receiver appointed by the Mayor shall have the authority to take any action it deems necessary to collect all rents or payments for use and occupancy from the tenants of the master-metered apartment building in lieu of the owner, except that the receiver shall not have authority to terminate water and sewer services. The receiver may require the owner of the master-metered apartment building to provide the names, apartment numbers, monthly rental payment amounts, and leases of the tenants of the master-metered apartment building.

(E) If the owner fails to comply with any request of the receiver necessary to accomplish its duties under the appointment, or the owner collects or attempts to collect any rents or payments for use and occupancy from the tenants of a building subject to an order appointing a receiver, the receiver is authorized to petition the Superior Court of the District of Columbia for an order granting injunctive relief. The petition shall be served upon the owner in the manner set forth in subparagraph (B) of this paragraph. A hearing on the petition shall be held no later than 72 hours after the petition was filed or the first court day thereafter. Any owner who fails to comply with any resulting order shall be found, after due notice and hearing, to be in contempt of court.

(F) The receiver shall pay the Department the current charges for water and sewer services provided on or after the date of the receiver's

appointment. The receiver may pay the Department a reasonable amount, not to exceed 10% of the total rent payments received, to be applied against the delinquent charges. The owner shall be liable for the reasonable fees and costs determined by the Mayor to be due the receiver. The fees and costs may be recovered from the rents or payments due for use and occupancy under the control of the receiver; provided, however, that no fees or costs shall be recovered until after payment of current water bills to a master-metered apartment building has been made. Any monies remaining after all payments, fees and costs shall be turned over to the owner. Upon order of the Mayor, the receiver shall become trustee of any escrow accounts or other funds established by the tenants or otherwise into which rents or payments for use and occupancy have been made by the receiver at such times as the Mayor determines to be just, reasonable and necessary.

(b) Any receivership established pursuant to subsection (a) of this section shall be terminated upon a finding that the arrearage that was the subject of the original petition has been satisfied, that all tenants have agreed to assume liability in their own names for prospective water and sanitary sewer services, or that the rental property has been sold and the new owner has assumed liability for prospective water and sanitary sewer services.

(c) Nothing in this section shall prevent the Mayor or a tenant from pursuing any other appropriate action or remedy at law or equity against the owner, agent, lessor, or manager of the rental property.

(d) Any owner, agent, lessor, or manager who collects or attempts to collect a rental payment from a tenant of the rental property subject to an order appointing a receiver pursuant to this section shall be found to be in contempt of court, after due notice and hearing.

(e) Any willful or malicious violation of this section or § 43-1653 by an owner, agent, lessor, or manager of a rental unit or any utility company shall be punishable by a fine of not more than \$500, imprisonment for not more than 30 days, or both. (May 18, 1954, 68 Stat. 101, ch. 218, title XVIII, § 1804, as added June 13, 1990, D.C. Law 8-136, § 2(g), 37 DCR 2620; Nov. 25, 1993, D.C. Law 10-65, § 501(c), 40 DCR 7351; May 16, 1995, D.C. Law 10-255, § 36, 41 DCR 5193.)

Legislative history of Law 8-136. — See note to § 43-1651.

Legislative history of Law 10-65. — See note to § 45-1610.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

§ 43-1655. Administrative review.

Any owner or occupant of a property that receives water and sewer services may contest a water or sanitary sewer service bill rendered for water and sewer services in accordance with §§ 1-1509 and 1-1510, as set forth in rules issued by the Mayor pursuant to § 43-1656. The Mayor shall require the owner or occupant to post a surety bond or deposit upon the filing of a request

for an administrative hearing, except that the requirement to post a surety bond or deposit shall not apply to an owner who occupies a single family house. The amount of the surety bond or deposit shall be determined by the Mayor and shall not be less than one-half of the total amount of charges, penalties, and interest owed. The surety bond or deposit shall be placed into an escrow account and accrue interest at a rate to be determined by the Mayor. (May 18, 1954, ch. 218, title XVIII, § 1805, as added June 13, 1990, D.C. Law 8-136, § 2(g), 37 DCR 2620.)

Section references. — This section is referred to in §§ 43-1652 and 43-1654.

Legislative history of Law 8-136. — See note to § 43-1651.

§ 43-1656. Rules.

(a) Within 60 days of June 13, 1990, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this act including rules regarding deposits, meters, liens, the sale and redemption of real property, the amnesty program, receivership, termination of water and sewer services, and administrative review.

(b) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be deemed approved.

(c) If after 90 days from June 13, 1990, the Mayor has failed to issue proposed rules to implement the provisions of this act as provided in subsection (a) of this section, the Council may adopt any legislation necessary to accomplish the purposes of this act. (June 13, 1990, D.C. Law 8-136, § 8, 37 DCR 2620.)

Section references. — This section is referred to in §§ 43-1653 and 43-1655.

Legislative history of Law 8-136. — See note to § 43-1651.

References in text. — “This act,” referred to in (a) and in two places in (c), is D.C. Law 8-136.

CHAPTER 16B. WATER AND SEWER AUTHORITY.

Subchapter I. Declaration of Policy.

Sec.

43-1661. Findings and declarations.

Subchapter II. General Provisions.

43-1671. Definitions.

43-1672. Establishment of the District of Columbia Water and Sewer Authority; general purpose of the Authority.

43-1673. General powers of Authority.

43-1674. Establishment of a board of directors.

43-1675. Duties of the Board.

43-1676. General Manager; employment and duties.

43-1677. Water and Sewer Enterprise Fund; assets of the Water and Sewer Utility Administration of the Department of Public Works; transfer of funds and assets; pledge of revenues.

43-1677.1. Operation and Maintenance Account.

Sec.

43-1678. Delegation of Council authority to issue bonds.

43-1679. Power of the Authority to issue revenue bonds and notes or other obligations.

43-1680. Delegation of Council authority to issue bonds.

43-1681. Delegation of Council authority to issue bonds.

43-1682. [Repealed].

43-1683. District repayment option.

43-1683.1. Defeasance of bonds.

43-1684. Procurement system inapplicable.

43-1685. Merit personnel system inapplicable.

43-1686. Charges and fees and rate setting.

43-1687. Transition provisions.

43-1688. Existing agreements.

43-1689. Transfer of function and redelegation of authority.

43-1690. No inurement to private persons; exemption from District taxation.

43-1691. Water and Sewer Authority budget.

Subchapter I. Declaration of Policy.

§ 43-1661. Findings and declarations.

The Council of the District of Columbia hereby finds and declares that:

(1) Providing water distribution services and sewage collection, treatment, and disposal to the District and portions of the Metropolitan Washington area is essential to ensure the health and safety of the citizens of the District.

(2) Commercial and industrial development in the District requires an adequate water and sewer utility system capable of meeting the needs of the District and the District's statutory obligation to provide wastewater treatment services to suburban jurisdictions.

(3) The financing requirements for water distribution and sewage collection, treatment, and disposal systems, including the ability to fund capital programs without undue reliance on the general obligation credit of the District, are substantial and require financial resources independent of other District funds.

(4) Creation of an independent authority with secure funding separated from the District's General Fund to oversee water and sewer operations for the District and surrounding jurisdictions will enhance the financial viability of water distribution and sewage collection, treatment, and disposal systems in the District and enhance the District's ability to meet its statutory obligation to provide sanitary sewer services to the surrounding jurisdictions.

(5) Creation of a water and sewer authority will enhance opportunities for economic development in the District and the Metropolitan Washington area.

(6) Professional and productive management and system-wide planning of water distribution and sewage collection, treatment, and disposal systems necessitate the creation of a water and sewer authority.

(7) It is in the best interest of the District, its citizens, and the surrounding jurisdictions that the Council establish an independent water and sewer authority to achieve the following goals and objectives:

(A) To facilitate the efficient and economical operation of water distribution and sewage collection, disposal, and treatment systems in the District and surrounding jurisdictions;

(B) To expedite the repair, replacement, rehabilitation, modernization, and extension of existing water distribution and sewage collection, treatment, and disposal systems including the financing, on a self-sustaining basis, of capital and operating expenses relating thereto;

(C) To enhance and protect water resources in the District and the Metropolitan Washington area by reducing pollution to adjacent streams; and

(D) To facilitate the provision of regional sanitary sewer services to the suburban jurisdictions that receive wastewater treatment services from the District's Blue Plains Wastewater Treatment Plant.

(8) In order to achieve maximum utilization of resources and efficiency of operations, the water and sewer authority should operate as a public enterprise. (Apr. 18, 1996, D.C. Law 11-111, § 101, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(a), 43 DCR 4265.)

Section references. — This section is referred to in § 1-1183.20.

Effect of amendments. — D.C. Law 11-184 substituted "independent authority with secure funding separated from the District's General Fund" for "authority" in (4).

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(a) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), see § 2(a) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and see § 2(a) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Section 3 of D.C. Act 11-466 provides for the application of the act.

Legislative history of Law 11-111. — Law 11-111, the "Water and Sewer Authority Estab-

lishment and Department of Public Works Reorganization Act of 1996," was introduced in Council and assigned Bill No. 11-102, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 7, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 31, 1996, it was assigned Act No. 11-201 and transmitted to both Houses of Congress for its review. D.C. Law 11-111 became effective on April 18, 1996.

Legislative history of Law 11-184. — Law 11-184, the "Highway Trust Fund Establishment Act and the Water and Sewer Authority Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-513, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-337 and transmitted to both Houses of Congress for its review. D.C. Law 11-184 became effective on April 9, 1997.

Cited in *United States v. District of Columbia Dep't of Emp. Servs.*, 933 F. Supp. 42 (D.D.C. 1996).

*Subchapter II. General Provisions.***§ 43-1671. Definitions.**

For the purposes of this chapter, the term:

(1) “Authority” means the District of Columbia Water and Sewer Authority established pursuant to § 43-1672(a).

(2) “Cost” means any and all reasonable expenses related to the purposes or activities of the Authority including expenses for operation and maintenance activities; expenses for preconstruction and construction, acquisition, alteration, improvement, enlargement of furnishing, fixturing and equipping, reconstruction and rehabilitation of the water distribution and sewage collection, treatment, and disposal systems of the District, including without limitation, the purchase or lease expense for all lands, structures, real or personal property, rights, rights-of-way, roads, franchises, easements, and interest acquired or used for, or in connection with the Authority; the expenses of demolishing or removing buildings or structures on land acquired by the Authority, including the expenses incurred for acquiring any lands to which the buildings may be moved or located; the expenses incurred for all utility lines, structures or equipment charges, and interest on financial obligations incurred for a period as the Authority may reasonably determine to be necessary for the effective functioning of the water distribution and sewage collection, treatment, and disposal systems; provisions for reserves for principal and interest for extensions, operating and contingency reserves, enlargements, additions, and improvements; expenses incurred for architectural engineering, energy efficiency technology, design and consulting, financial and legal services, letters of credit, bond insurance, debt service or debt service reserve insurance, surety bonds or similar credit enhancement instruments, plans, specification studies, surveys, and estimates of expenses and of revenues; expenses necessary or incident to determining the feasibility of improvements to the water distribution and sewage collection, treatment, and disposal systems, the financing of such improvements, including a proper allowance for contingencies, and the provision of reasonable initial working capital for operating the improved systems and expenses for obtaining potable water for distribution.

(3) “Dedicated revenues” means revenues collected pursuant to water and sewer rates, fees, and charges imposed by the Authority.

(4) “Joint-use sewerage facilities” means the following:

- (A) Little Falls Trunk Sewer;
- (B) Upper Potomac Interceptor Sewer;
- (C) Upper Potomac Interceptor Relief Sewer;
- (D) Rock Creek Main Interceptor Sewer;
- (E) Rock Creek Main Interceptor Relief Sewer;
- (F) Potomac River Interceptor Sewer;
- (G) Potomac River Sewage Pumping Station;
- (H) Potomac River Force Mains;
- (I) Watts Branch Trunk Sewer;

- (J) Anacostia Force Main (Project 89 Sewer);
- (K) Anacostia Force Main & Gravity Sewer;
- (L) Outfall Sewers (Renamed Potomac River Trunk Sewers);
- (M) Outfall Relief Sewers (Renamed Potomac River Trunk Relief Sewers);
- (N) Upper Oxon Run Trunk Sewer;
- (O) Upper Oxon Run Trunk Relief Sewer;
- (P) Lower Oxon Run Trunk Sewer;
- (Q) Lower Oxon Run Trunk Relief Sewer;
- (R) Blue Plains Wastewater Treatment Plant (Blue Plains); and
- (S) Potomac Interceptor Sewer.

(5) “Other participating jurisdictions” means Montgomery County, Maryland, Prince George’s County, Maryland, and Fairfax County, Virginia.

(6) “Revenue bond” means any revenue bond, note, or other obligation (including refunding bonds, notes, or other obligations) used to borrow money to finance, assist in financing, or to refinance undertakings authorized by § 47-334, and this chapter.

(7) “Service sewer” means a sewer with which connection may be directly made for the purpose of providing sewage facilities to abutting property.

(8) “Sewage collection, treatment, and disposal systems” means all the facilities used, or to be used, for the collection, transmission, treatment, and disposal of sanitary sewage and stormwater flow, including the following:

(A) Sewers carrying the following:

- (i) Sewage mixed with storm and surface water;
- (ii) Sewage discharged from sanitary conveniences;
- (iii) Commercial or industrial wastes;
- (iv) Water distributed after use;
- (v) Stormwater run-off; and
- (vi) Both sanitary sewage run-off and stormwater run-off;

(B) Sanitary, stormwater, and combined pumping stations;

(C) Wastewater treatment plants, including the Blue Plains Wastewater Treatment Plant; and

(D) Facilities for the processing, management, and disposal of biosolids.

(9) “Sewer” means a pipe or conduit carrying sewage or stormwater flow.

(10) “Water and sewer rates” means the fees imposed by the Authority on its retail customers for water, sewer, and stormwater services pursuant to this chapter.

(11) “Water distribution system” means all the facilities used, or to be used, for the distribution of potable water situated within the public space of the District. (Apr. 18, 1996, D.C. Law 11-111, § 201, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(b), 43 DCR 4265.)

Effect of amendments. — D.C. Law 11-184, in (2), inserted “related to the purposes or activities of the Authority” and added “and expenses for obtaining potable water for distribution” at the end; rewrote (5); and deleted “exclusive of those facilities that are operated and maintained by the Washington Aqueduct

Division of the Army Corps of Engineers or its designated successor” from the end of (11).

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(b) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(b) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(b) of the Water and Sewer Authority Congressional

Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Section 3 of D.C. Act 11-466 provides for the application of the act.

Legislative history of Law 11-111. — See note to § 43-1661.

Legislative history of Law 11-184. — See note to § 43-1661.

§ 43-1672. Establishment of the District of Columbia Water and Sewer Authority; general purpose of the Authority.

(a) There is established, as an independent authority of the District government, the District of Columbia Water and Sewer Authority. The Authority shall be a corporate body, created to effectuate certain public purposes, that has a separate legal existence within the District government.

(b) Except as provided in §§ 43-1684 and 43-1685, the Authority shall be subject to all laws applicable to offices, agencies, departments, and instrumentalities of the District government, and shall be subject to the provisions of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 777; D.C. Code § 1-201 *passim*) (“Self-Government Act”).

(c) Notwithstanding any other provisions of this chapter, the general purpose of the Authority is to plan, design, construct, operate, maintain, regulate, finance, repair, modernize, and improve water distribution and sewage collection, treatment, and disposal systems and services, and to encourage conservation. (Apr. 18, 1996, D.C. Law 11-111, § 202, 43 DCR 548.)

Section references. — This section is referred to in § 43-1671.

Legislative history of Law 11-111. — See note to § 43-1661.

References in text. — Section 11717(b) of Title XI of Pub. L. 105-33, 111 Stat. 786 provided that any reference in law or regulation to the “District of Columbia Self-Government and

Governmental Reorganization Act” shall be deemed to be a reference to the “District of Columbia Home Rule Act,” which is set out in Volume 1.

Establishment of the Executive Transition Team for the District of Columbia Water and Sewer Authority. — See Mayor’s Order 96-43, March 27, 1996 (43 DCR 1807).

§ 43-1673. General powers of Authority.

In addition to the delegation of powers contained in § 43-1678, the Authority shall possess the following powers:

- (1) To sue and be sued;
- (2) To have a seal and alter the seal at its pleasure;
- (3) To make, adopt, and alter by-laws, rules, and regulations for the administration and regulation of its business and affairs;
- (4) To elect, appoint, or hire officers, employees, or other agents of the Authority, except Board members, including experts and fiscal agents, define their duties, and fix their compensation;
- (5) To acquire, by purchase, gift, lease, or otherwise, and to own, hold, improve, use, sell, convey, exchange, transfer, lease, sublease, and dispose of

real and personal property of every kind and character, or any interest therein, for its corporate purposes;

(6) To issue regulations and establish policies for contracting and procurement which are consistent with principles of competitive procurement;

(7) To accept loans, gifts, or grants of money, materials, or property of any kind from the United States, or any agency or instrumentality thereof, or the District, upon terms and conditions as may be imposed upon the Authority to the extent that the terms and conditions are not inconsistent with the limitations and laws of the District and are otherwise within the powers of the Authority;

(8) To borrow money for any of its corporate purposes and to provide for the payment of the same, as may be permitted under the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 777; D.C. Code § 1-201 *passim*), and the laws of the District;

(9) To issue revenue bonds pursuant to § 43-1679;

(10) To enter into contracts with the District, the United States, Maryland, or Virginia, or their political subdivisions, other public entities, or private entities for goods and services as needed to achieve its purposes; provided, that prior to the Authority contracting out to a private entity, a service or activity performed by employees of the Authority, through established standards developed by rules and regulations, the Authority shall establish that the contracting out will achieve increased efficiencies and cost savings to the Authority; provided further, that any contractor who is awarded a contract that displaces any District government employee of the Authority shall offer to any displaced employee a right-of-first-refusal to employment by the contractor, in a comparable available position for which the employee is qualified, for a least a 6-month period during which time the employee shall not be discharged without cause. If the employee's performance during the 6-month transition employment period is satisfactory, the new contractor shall offer the employee continued employment under the terms and conditions established by the new contractor. Any District government employee of the Authority who is displaced as a result of a contract and is hired by the contractor who was awarded the contract which displaced the employee shall be entitled to the benefits provided by the Service Contract Act of 1965, 41 U.S.C. § 351 *et seq.*, notwithstanding any exclusion of applicability of the Service Contract Act of 1965 to the employee;

(11) To establish, adjust, levy, collect, and abate charges for services, facilities, or commodities furnished or supplied by it;

(12) To refund overcharges for services, facilities, or commodities furnished or supplied by it;

(13) To undertake any public project, acquisition, construction, or any other act necessary to carry out its purposes;

(14) To maintain, repair, operate, extend, enlarge, investigate, design, construct, and improve the water distribution and sewage collection, treatment, and disposal systems;

(15) To engage in activities, programs, and projects on its own behalf or, with the concurrence of the Mayor, jointly with other public bodies or political divisions or subdivisions of the District of Columbia;

(16) To provide for the cost of activities, programs, and projects from grants, loans, the proceeds of bonds, or from other revenues available to the Authority for such purposes;

(17) To exercise any power usually possessed by public enterprises or private corporations performing similar functions that is not in conflict with the Self-Government Act, or the laws of the District;

(18) To implement all rules, regulations, and laws relating to the distribution of water and sewage collection, treatment, and disposal, other than those laws that impose a penalty of imprisonment;

(19) To shut off water and sewer service, after notice, for good and sufficient cause;

(20) To purchase and distribute potable water to the inhabitants of the District;

(21) To purchase and distribute potable water to other jurisdictions as provided by law;

(22) To develop policies related to the proper use and distribution of water to households and public and private institutions during times of normal consumption and during emergency situations;

(23) To construct water mains and sewers in any street, avenue, road, or alley in the District under conditions as the Mayor may prescribe;

(24) To petition the Mayor to acquire property through eminent domain;

(25) To enter into contracts, including leases and lease-purchase agreements involving real property and personal property;

(26) To indicate in its records the existence and location of sewers and service sewers within its jurisdiction;

(27) To determine whether potable water should be used for mechanical and manufacturing purposes, private fountains, and street and pavement washers;

(28) To privatize the day-to-day operations of the Blue Plains Wastewater Treatment Plant; provided, that the Board of Directors of the Authority submit its recommendation on the feasibility of privatization pursuant to § 43-1675(g)(1) and submits the privatization contract pursuant to § 43-1675(g)(2);

(29) To enter into a financing lease, a service agreement or other arrangement for contracted services; obligations with respect to credit facilities; and interest rate swaps, interest rate caps, interest rate floors and any other interest rate-related hedge agreements entered into by the Authority for the purpose of interest rate risk and asset management that may be, but need not be, entered into in conjunction with the issuance of bonds or notes by the Authority;

(30) To do all things necessary or convenient to carry out the powers expressly provided by this chapter; and

(31) To determine whether churches, charitable organizations, or institutions that receive annual appropriations from Congress should be furnished with water or sewer service without charge.

(32) To collect and receive its revenues and disburse its necessary and reasonable expenses. (Apr. 18, 1996, D.C. Law 11-111, § 203, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(c), 43 DCR 4265; Apr. 9, 1997, D.C. Law 11-255, § 45, 44 DCR 1271.)

Section references. — This section is referred to in § 43-1677.

Effect of amendments. — D.C. Law 11-184 inserted “of the Authority” following “government employee” in the first and third sentences in (10); inserted “purchase and” in (20) and (21); substituted “other jurisdictions” for “the other participating jurisdictions” in (21); and added (32).

D.C. Law 11-255 made punctuation changes at the end of (10) and (22); and validated previously made punctuation and stylistic corrections at the end of (26), (28), and (30).

Emergency act amendments. — For temporary amendment of section, see § 2(c) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(c) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(c) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(c) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Section 3 of D.C. Act 11-466 provides for the application of the act.

For temporary approval of a multiyear contract with the United States of America for

potable water, see §§ 2 and 3 of the Multiyear Water Purchase Agreement Emergency Amendment Act of 1997 (D.C. Act 12-116, July 28, 1997, 44 DCR 4504).

Legislative history of Law 11-111. — See note to § 43-1661.

Legislative history of Law 11-184. — See note to § 43-1661.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

References in text. — The “Self-Government Act,” referred to in (17), is the District of Columbia Self-Government and Governmental Reorganization Act, December 24, 1973, 87 Stat. 774, Pub. L. 93-198, which is set out in full in Volume 1 of the Code and which is primarily codified as D.C. Code, § 1-201 et seq.

Section 11717(b) of Title XI of Pub. L. 105-33, 111 Stat. 786 provided that any reference in law or regulation to the “District of Columbia Self-Government and Governmental Reorganization Act” shall be deemed to be a reference to the “District of Columbia Home Rule Act,” which is set out in Volume 1.

§ 43-1674. Establishment of a board of directors.

(a)(1) The Authority shall be governed by a board of directors (“Board”) comprised of 11 members.

(2) Six Board members shall be residents of the District, appointed by the Mayor with the advice and consent of the Council, of which no more than 4 may be District employees or officials. The nomination of a Board member shall be submitted to the Council for a 30-day period of review excluding days of Council recess. The Council may approve or disapprove the nomination by resolution within 30 days of the date the nomination is transmitted to the Council. If the Council does not adopt a resolution within the 30-day period, the nomination shall be deemed approved upon the expiration of the review period.

(3) The Mayor shall appoint persons recommended by the other participating jurisdictions to the remaining 5 Board positions. These 5 Board members shall only participate in decisions directly affecting the general management of joint-use sewerage facilities. Of the 5 non-District Board members appointed by the Mayor:

(A) One Board member shall be a person recommended by Fairfax County, Virginia, pursuant to jurisdictional law;

(B) Two Board members shall be persons recommended by Montgomery County, Maryland, pursuant to jurisdictional law; and

(C) Two Board members shall be persons recommended by Prince George's County, Maryland, pursuant to jurisdictional law.

(4) The Mayor shall also appoint an alternate for each Board member, in the same manner as set forth for Board members in paragraphs (2) and (3) of subsection, who may attend all Board meetings but who may act only in the absence of the Board member for whom he or she has been appointed the alternate.

(b) Any Board member or alternate who is an employee of the District government, including an elected official, shall be removed from the Board upon leaving the employment of the District government or elected office.

(c) Any Board member or alternate who is an employee of the government of one of the other participating jurisdictions, including an elected official, may, upon leaving the employment of the government or elected office, have his or her membership on the Board terminated by the Mayor or, at the Mayor's initiative, following consultation with the appropriate official set forth in subsection (a)(3) of this section.

(d) Board members and alternates shall serve 4-year terms. Of the 11 Board members and alternates initially appointed to the Board, 3 District appointees and 2 other participating jurisdiction appointees shall serve 4-year terms, 2 District appointees and 2 other participating jurisdiction appointees shall serve 3-year terms, and one District appointee and one other participating jurisdiction appointee shall serve 2-year terms.

(e) Any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired term of the Board member whose vacancy is being filled. If any Board member or alternate is appointed to fill an unexpired term with more than 2 years remaining in the term, upon expiration of the term, that Board member or alternate shall be deemed to have served a full 4-year term. At the end of a term, a Board member or alternate shall continue to serve until a successor is appointed.

(f) The Mayor shall appoint a chairperson of the Board from among the 6 District Board members.

(g) The Mayor shall remove any Board member or alternate from office for misconduct or neglect of duty, as defined by the Board in its by-laws, or for other good cause, after notice to the Board member. Prior to removing a Board member or alternate appointed pursuant to subsection (a)(3) of this section, the Mayor shall consult with the official or officials who recommended the Board member or alternate. The Mayor shall also remove a Board member or alternate appointed pursuant to subsection (a)(3) of this section upon the request of the official or officials who recommended the board member or alternate, if grounds exist for removal under this subsection.

(h) Should a Board member or alternate be indicted for the commission of a felony, the Board member or alternate shall be automatically suspended from serving on the Board. Upon a final determination of guilt, the term of the Board member or alternate shall be automatically terminated. Upon a final determination of innocence, the Mayor may reinstate the Board member or alternate.

(i) All Board meetings shall be subject to the provisions of § 1-1504.

(j) Before any meeting of the Board, Board members shall be notified of the meeting. Six Board members shall constitute a quorum for the transaction of business. The existence of a quorum and an affirmative vote of a majority of the members present, who are permitted to participate in the matter under consideration, shall be required to approve any Board action; except, that 7 affirmative votes shall be required for approval of the Authority's budget and 8 affirmative votes shall be required for the hiring or firing of the General Manager. No vacancy in membership shall impair the right of a quorum to exercise all rights and perform all duties of the Board.

(k) A Board member not otherwise compensated by the District or one of the other participating jurisdictions shall be entitled to compensation by the Authority at the rate of \$50 per meeting, not to exceed \$4,000 per year. Board members shall not be entitled to reimbursement for expenses, except that transportation, parking, or mileage expenses incurred in the performance of official duties of the Board may be reimbursed, not to exceed \$20 per meeting. (Apr. 18, 1996, D.C. Law 11-111, § 204, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(d), 43 DCR 4265.)

Effect of amendments. — D.C. Law 11-184 substituted "11 members" for "10 members" in (a)(1); rewrote (a)(3) and (d); and substituted "and 8 affirmative votes shall be required for the hiring or firing of" for "and the selection of" in the third sentence in (j).

Emergency act amendments. — For temporary amendment of section, see § 2(d) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(d) of the Water and Sewer Authority Congressional Review Emergency Amendment Act

of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(d) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(d) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Section 3 of D.C. Act 11-466 provides for the application of the act.

Legislative history of Law 11-111. — See note to § 43-1661.

Legislative history of Law 11-184. — See note to § 43-1661.

§ 43-1675. Duties of the Board.

(a) The Board shall have the following duties:

(1) To adopt and publish internal operating rules for the conduct of Board meetings;

(2) To develop policies for the management, maintenance, and operation of water distribution and sewage collection, treatment, and disposal systems under the control of the Authority;

(3) Adopt and publish rules and regulations governing the operation of the water distribution and sewage collection, treatment, and disposal systems under the control of the Authority;

(4) Develop and establish a personnel system and publish rules and regulations setting forth minimum standards for all employees, including pay, contract terms, leave, retirement, health and life insurance, and employee disability and death benefits;

(5) Select, employ, and fix the compensation and benefits for the General Manager and for the staff of the Board, as it deems necessary;

(6) Delegate to the General Manager any authority granted to the Board under subsection (a)(2) through (5) of this section; and

(7) To establish a procurement system which is consistent with principles of competitive procurement and to publish rules and regulations relating thereto.

(b)(1) The personnel system developed pursuant to subsection (a)(4) of this section shall be in place no later than 6 months after April 18, 1996. The personnel rules and regulations shall require that no employee shall engage in outside employment, private business activity, or have any direct or indirect financial interest that conflicts, or would appear to conflict, with the fair, impartial, and objective performance of the employee's assigned duties and responsibilities.

(2) Department of Public Works employees whose salaries are funded by the Water and Sewer Utility Administration shall become employees of the Authority without impairment of civil service status and seniority, reduction in compensation (notwithstanding any change in job titles or duties, and except as may otherwise be provided under the personnel system developed pursuant to subsection (a)(4) or a collective bargaining agreement entered into after April 18, 1996) or loss of accrued rights to holidays, leave, and benefits. All employees of the Authority shall perform their duties under the direction, control, and supervision of the Authority; provided, however, that any employee subject to transfer whose existing duties and responsibilities are determined by the Authority and the Department of Public Works to relate directly and primarily to functions of the Department of Public Works, and for whom a position at the Department of Public Works is funded in whole or in part, shall remain an employee of the Department of Public Works and shall continue to perform duties under the direction, control, and supervision of the Department of Public Works and not under funding arrangements thereafter derived from the accounts of the Authority.

(c) The Board shall prepare, within 120 days after the end of each District government fiscal year, a detailed annual report setting forth a description of the Authority's operations and accomplishments during the year and shall transmit copies of the report to the Mayor and the Council.

(d) The Board shall contract with an independent certified public accountant to perform an annual audit of the books and accounts of the Authority and shall submit the audit to the Mayor, the Chief Financial Officer, and the Inspector General.

(e) The Board shall annually develop, adopt, and submit to the Mayor a multiyear financial plan for capital and operating expenses encompassing at least the forthcoming 5 fiscal years. The plan shall be submitted to the Mayor no less than 90 days prior to the beginning of each District government fiscal year.

(f) The Board shall carry insurance sufficient to protect the Authority, the Board, the Board members, officers, and employees of the Board, its lessees or occupants, the District government, and other participating jurisdictions against risks associated with the exercise by the Authority or the Board of any authority conferred by this chapter; provided, however, that no Board member

shall be personally liable for any act or omission of the Authority, except with regard to any fraudulent or criminally prosecutable act committed by a Board member in connection with an act or omission of the Authority.

(g)(1) The Board shall assess the feasibility, including the financial benefits, if any, of engaging a private entity to lease, or purchase all or any portion of the Blue Plains Wastewater Treatment Plant. This assessment shall be completed no later than 6 months after April 18, 1996. The Board shall submit its recommendation to the Mayor who shall submit his or her recommendation to the Council within 60 days of receiving the Board's recommendation.

(2) No contract to privatize the Blue Plains Wastewater Treatment Plant shall be entered into by the Authority, unless the Board submits the privatization contract to the Mayor, the Mayor approves and submits the contract to the Council, and the Council approves the contract pursuant to § 1-1130(b)(1) and the Council Contract Approval Modification Temporary Act of 1996, effective April 9, 1997 (D.C. Law 11-190; 43 DCR 4279) ("Contract Approval Act") and succeeding laws.

(3) No contract to purchase or lease all or any portion of the Blue Plains Wastewater Treatment Plant shall be entered into by the Authority unless the Board submits the sale or lease contract to the Mayor, the Mayor approves and submits the contract to the Council, and the Council approves the contract pursuant to § 1-1130(b)(1) and the Contract Approval Act and any succeeding laws.

(4) Notwithstanding any other law, any agreement or contract to operate the Blue Plains Treatment Plant shall reserve to the District the right of access and use of any water front property, including the concrete pier. (Apr. 18, 1996, D.C. Law 11-111, § 205, 43 DCR 548; Aug. 8, 1996, 110 Stat. 1698, Pub. L. 104-184, § 5; Apr. 9, 1997, D.C. Law 11-184, § 202(e), 43 DCR 4265.)

Section references. — This section is referred to in §§ 43-1673 and 43-1677.

Effect of amendments. — Public Law 104-184, substituted "duties, and except ... after April 18, 1996" for "duties" in the first sentence in (b)(2).

D.C. Law 11-184 added (a)(7); added "and shall submit the audit to the Mayor, the Chief Financial Officer, and the Inspector General" at the end of (d); rewrote (e); deleted "operate, manage, maintain" preceding "lease" in the first sentence in (g)(1); and substituted "including" for "include" in (g)(4).

Emergency act amendments. — For temporary amendment of section, see § 2(e) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(e) of the Water and Sewer Authority Con-

gressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5689), § 2(e) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(e) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Section 3 of D.C. Act 11-466 provides for the application of the act.

Legislative history of Law 11-111. — See note to § 43-1661.

Legislative history of Law 11-184. — See note to § 43-1661.

References in text. — As of the printing of this volume, the "succeeding laws," referred to in (g)(2), include D.C. Act 12-214, D.C. Act 12-305, and D.C. Law 12-78.

§ 43-1676. General Manager; employment and duties.

The Board, by the affirmative vote of 8 of its members, shall employ a General Manager who shall be the chief administrative officer of the Authority.

The General Manager shall not be a member of the Board and shall serve at the pleasure of the Board. The General Manager shall perform duties as determined by the Board. (Apr. 18, 1996, D.C. Law 11-111, § 206, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(f), 43 DCR 4265.)

Effect of amendments. — D.C. Law 11-184 substituted “8 of its members” for “7 of its members” in the first sentence.

Emergency act amendments. — For temporary amendment of section, see § 2(f) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(f) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(f) of the Water and Sewer

Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(f) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Section 3 of D.C. Act 11-466 provides for the application of the act.

Legislative history of Law 11-111. — See note to § 43-1661.

Legislative history of Law 11-184. — See note to § 43-1661.

§ 43-1677. Water and Sewer Enterprise Fund; assets of the Water and Sewer Utility Administration of the Department of Public Works; transfer of funds and assets; pledge of revenues.

(a) There is established the Water and Sewer Authority Enterprise Fund (“Fund”) which shall be the successor to the Water and Sewer Enterprise Fund established pursuant to § 47-375(g). The Fund shall be operated by the Authority in accordance with generally accepted accounting principles.

(b) Subject to the provisions made by the Authority pursuant to this subchapter for security of revenue bonds, all revenues, proceeds, and moneys from whatever source derived which are collected or received by the Authority shall be credited to the Fund and shall not, at any time, be transferred to, lapse into, or be commingled with the General Fund of the District of Columbia, the Cash Management Pool, or any other funds or accounts of the District of Columbia, except that funds shall be transferred to the District of Columbia Treasurer:

(1) To pay for goods, services, and property contracted for by the Authority from the District as authorized by § 43-1673(4) and (10) and § 43-1687(c);

(2) To make debt service payments required by subsection (f) of this section;

(3) To enable the Treasurer to make disbursements on the Authority’s behalf until the Authority’s own disbursement system is established, as authorized by § 43-1687(f); or

(4) As otherwise authorized by this subchapter.

(c) Repealed.

(d) Any pledge by the Authority of any funds on deposit in the Fund shall be effective, valid, perfected, and binding from the time the pledge is made with or without the delivery of any funds, and with or without any further action. Such pledge shall be effective, valid, perfected, and binding whether or not any statement, document, or instrument relating to such pledge is recorded or filed.

The pledged revenues shall be immediately subject to the lien of the pledge, whether or not there has been any physical delivery. The lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against any person receiving distribution of revenues whether or not the parties have notice of the pledge.

(e) Within 120 days of April 18, 1996, the Mayor shall cause to be performed an independent audit of the assets and liabilities of the Department of Public Works, Water and Sewer Utility Administration. The independent audit shall also determine the present day value of services provided by the District government during the preceding 20-year period to the Water and Sewer Utility Administration, or any or its predecessor administrations or agencies. The audit shall determine the amount and adequacy of any funding provided by the Water and Sewer Utility Administration for these services. The Mayor shall provide the Council with a final version of the independent audit. Based upon the results of the independent audit, and notwithstanding the provisions of §§ 1-299.1 through 1-299.7, the Mayor shall, through an intra-District government transfer, permit the Authority to use any assets the Mayor considers to be required for the Authority's operations upon such terms and conditions as the Mayor finds appropriate, and shall transfer any liabilities that are directly attributable to the water distribution system or sewage collection, treatment, and disposal systems, other than the general obligation bonds referred to in subsection (f) of this section. The District government shall retain full legal title to, and a complete equitable interest in, all assets made available for the Authority's use. Pending the intra-District government transfer required by this subsection, all assets and liabilities of the Water and Sewer Utility Administration, as indicated on the balance sheet prepared by the Water and Sewer Utility Administration just prior to April 18, 1996, shall be transferred for the Authority's use on an interim basis. Assets made available to the Authority pursuant to this subsection shall remain under the control of the Authority for as long as Authority revenue bonds are outstanding, unless all of the outstanding revenue bonds are defeased pursuant to § 43-1683, or otherwise.

(f) The Authority shall transfer to the General Fund of the District funds necessary for the District to make debt service payments on District general obligation bonds related to the Department of Public Works, Water and Sewer Utility Administration. The payments shall be in the amount and made at such times as the Treasurer of the District of Columbia requires in writing, and the payments shall continue until the District's general obligations bonds related to the Department of Public Works, Water and Sewer Utility Administration are fully paid.

(g)(1) Twelve months subsequent to the completion of the first full year of operation of the Authority, the chairperson of the Board shall cause a study to be undertaken to determine the feasibility of establishing the Authority as an independent regional authority and to make recommendations for the ongoing relationship of user jurisdictions to the Authority.

(2) The feasibility study shall include base-line data obtained pursuant to the requirements for annual reports as set forth in § 43-1675(c), (d), and (e),

and the audit of the assets and liabilities of the Department of Public Works, Water and Sewer Utility Administration required by subsection (e) of this section.

(3) The study recommendations shall include the manner in which the District would be compensated by the Authority for the District's historic investment in the capital improvements and maintenance of the Blue Plains facility, should the Authority become an independent regional authority, as well as options for retention by the District of the land upon which any Authority plant and facilities are located within the boundaries of the District.

(4) Within 180 days of its inception, the study and its recommendations shall be completed and submitted to the Mayor, the Council, and the appropriate official of each of the other participating jurisdictions. (Apr. 18, 1996, D.C. Law 11-111, § 207, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(g), 43 DCR 4265.)

Section references. — This section is referred to in § 43-1677.

This section is referred to in § 43-1683.1.

Effect of amendments. — D.C. Law 11-184 rewrote (a) and (b); repealed (c); and added the last sentence in (e).

Emergency act amendments. — For temporary amendment of section, see § 2(g) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(g) of the Water and Sewer Authority Congressional Review Emergency Amendment Act

of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(g) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(g) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Section 3 of D.C. Act 11-466 provides for the application of the act.

Legislative history of Law 11-111. — See note to § 43-1661.

Legislative history of Law 11-184. — See note to § 43-1661.

§ 43-1677.1. Operation and Maintenance Account.

(a)(1) *Contents of account.* — There is hereby established within the Water and Sewer Enterprise Fund the Operation and Maintenance Account, consisting of all funds paid to the District of Columbia on or after April 26, 1996 which are:

(A) Attributable to waste water treatment user charges;

(B) Paid by users jurisdictions for the operation and maintenance of the Blue Plains Wastewater Treatment Facility and related waste water treatment works; or

(C) Appropriated or otherwise provided for the operation and maintenance of the Blue Plains Wastewater Treatment Facility and related waste water treatment works.

(2) *Use of funds in account.* — Funds in the Operation and Maintenance Account shall be used solely for funding the operation and maintenance of the Blue Plains Wastewater Treatment Facility and related waste water treatment works and may not be obligated or expended for any other purpose, and may be used for related debt service and capital costs if such funds are not attributable to user charges assessed for purposes of section 204(b)(1) of the Federal Water Pollution Control Act.

(b) *EPA Grant Account.* —

(1) *Contents of account.* — There is hereby established within the Water and Sewer Enterprise Fund and EPA Grant Account, consisting of all funds paid to the District of Columbia on or after April 26, 1996, which are:

(A) Attributable to grants from the Environmental Protection Agency for construction at the Blue Plains Wastewater Treatment Facility and related waste water treatment works; or

(B) Appropriated or otherwise provided for construction at the Blue Plains Wastewater Treatment Facility and related waste water treatment works.

(2) *Use of funds in account.* — Funds in the EPA Grant Account shall be used solely for the purposes specified under the terms of the grants and appropriations involved, and may not be obligated or expended for any other purpose. (Apr. 26, 1996, 110 Stat. 1321 [224], Pub. L. 104-134, § 154.)

References in text. — “Section 204(b)(1) of the Federal Water Pollution Control Act,” referred to in (a)(2), is classified as 33 U.S.C. § 1284(b)(1).

§ 43-1678. Delegation of Council authority to issue bonds.

The Council delegates to the Authority the power of the Council under section 490 of the Self-Government Act (D.C. Code § 47-334) to issue revenue bonds to finance, refinance, or assist in the financing or refinancing of any undertakings of the Authority pursuant to this chapter. (Apr. 18, 1996, D.C. Law 11-111, § 208, 43 DCR 548.)

Section references. — This section is referred to in § 43-1673.

Legislative history of Law 11-111. — See note to § 43-1661.

Effective date. — Section 701 of D.C. Law 11-111 provided that the act, with the exception of sections 208 through 211, shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(c)), and a 30-day period of Congressional review as provided in section 602 (c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87

Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register. Sections 208 through 211 of the act shall take effect upon the enactment by Congress of the legislation proposed in title IV of the act, or of substantially similar legislation.

Amendments to §§ 47-334, 47-304, and 47-313 substantially similar to those proposed in title IV of D.C. Law 11-111 were enacted by Pub. L. 104-184, § 2, 110 Stat. 1696, August 6, 1996.

References in text. — Section 11717(b) of Title XI of Pub. L. 105-33, 111 Stat. 786 provided that any reference in law or regulation to the “District of Columbia Self-Government and Governmental Reorganization Act” shall be deemed to be a reference to the “District of Columbia Home Rule Act,” which is set out in Volume 1.

§ 43-1679. Power of the Authority to issue revenue bonds and notes or other obligations.

(a) Except as provided in subsection (h) of this section, the Authority may at any time, and from time to time, issue revenue bonds (including refunding bonds, notes, or other obligations), by resolution, in one or more series to finance or refinance any cost. The resolution shall name the Chairperson of the

Board or his or her designee as the authorized delegate to execute all documents related to the revenue bond financings or refinancings.

(b) Revenue bonds of the Authority are obligations payable from revenues of the Authority from whatever source derived, including certain dedicated revenues, earnings on the Fund, and any other revenue available to the Authority which may lawfully be used for these purposes.

(c) Regardless of their form or character, revenue bonds of the Authority are negotiable instruments for all purposes of the Uniform Commercial Code of the District of Columbia, approved December 30, 1963 (77 Stat. 631; D.C. Code § 28: 1-101 *et seq.*), subject only to the provisions of the bonds for registration.

(d) No official, employee, or agent of the Authority shall be held personally liable solely because a revenue bond is issued.

(e) The issuance and performance of bonds by the Authority as contemplated in this act and the adoption of resolutions authorizing such bonds, notes, and other obligations shall be done in compliance with the requirements of this act, but shall not be subject to subchapter I of Chapter 15 of Title 1.

(f) The Authority shall have the power to borrow money and to issue revenue bonds regardless of whether or not the interest payable by the Authority incident to such loans or revenue bonds or the income derived by the holders of the evidence of such indebtedness or revenue bonds notes is, for the purposes of federal taxation, includable in the taxable income of the recipients of these payments or is otherwise not exempt from the imposition of taxation on the recipients.

(g) The Authority shall have the power to contract with the holders of its revenue bonds, as to the custody, collection, securing, investment, and payment of any monies of the Authority and of any monies held in trust or otherwise for the payment of revenue bonds.

(h) During each fiscal year in which debt service on the proposed bonds and outstanding revenue bonds issued by the Authority, and the transfer provided in § 43-1677(f) becomes due and payable, the Authority may not issue bonds, notes, or other obligations or borrow money unless the Authority first certifies, to the reasonable satisfaction of the District of Columbia Auditor, that the revenues of the Authority are sufficient to pay its costs, the principal of and interest on and other requirements pertaining to the proposed bonds and outstanding revenue bonds issued by the Authority, and amounts equal to the debt service payments on District general obligation bonds issued by the District prior to October 1, 1996, which financed Department of Public Works, Water and Sewer Utility Administration capital projects, as such bonds and transfers become due and payable. The Authority's certification shall be supported by expert study and analysis.

(i) The Authority shall set rates, fees, levies, and other charges which will result in the collection of amounts which, together with other Authority revenues available and applicable, will be at least sufficient to pay its costs, the principal of and interest on and other requirements pertaining to its bonds, and to make transfers to the District of amounts equal to the debt service payments on District general obligation bonds issued by the District prior to October 1, 1996, which financed Department of Public Works, Water and Sewer

Utility Administration capital projects, as such bonds and transfers become due and payable.

(j) All bonds issued by the Authority shall be callable not more than 11 years after the date of the issuance of the respective bond. (Apr. 18, 1996, D.C. Law 11-111, § 209, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(h), 43 DCR 4265; Mar. 24, 1998, D.C. Law 12-81, § 53, 45 DCR 745.)

Section references. — This section is referred to in § 43-1673.

Effect of amendments. — D.C. Law 11-184 added the exception at the beginning of the first sentence in (a); and added (h) through (j).

D.C. Law 12-81 validated a previously made technical correction.

Emergency act amendments. — For temporary amendment of section, see § 2(h) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160), § 2(h) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(h) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(h) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Section 3 of D.C. Act 11-466 provides for the application of the act.

Legislative history of Law 11-111. — See note to § 43-1661.

Legislative history of Law 11-184. — See note to § 43-1661.

Legislative history of Law 12-81. — Law 12-81, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first

and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Effective date. — Section 701 of D.C. Law 11-111 provided that the act, with the exception of sections 208 through 211, shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(c)), and a 30-day period of Congressional review as provided in section 602 (c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register. Sections 208 through 211 of the act shall take effect upon the enactment by Congress of the legislation proposed in title IV of the act, or of substantially similar legislation.

Amendments to §§ 47-334, 47-304, and 47-313 substantially similar to those proposed in title IV of D.C. Law 11-111 were enacted by Pub. L. 104-184, § 2, 110 Stat. 1696, August 6, 1996.

§ 43-1680. Delegation of Council authority to issue bonds.

(a) The Authority may stipulate by resolution the terms for sale of its bonds in accordance with this act, including the following:

- (1) The date a note or bond bears;
- (2) The denomination;
- (3) Any interest rate or rates, or variable rate or rates changing from time to time, or premium or discount applicable;
- (4) The registration privileges;
- (5) The medium and method for payment; and
- (6) The terms of redemption.

(b) The Authority may sell its bonds at public or private sale and may determine the price for sale.

(c) A resolution authorizing the sale of bonds may contain any of the following provisions, in which case these provisions shall be made part of the contract with holders of the bonds:

(1) The custody, security, expenditure, or application of proceeds of the sale of bonds of the Authority ("proceeds"), a pledge of the proceeds to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(2) A pledge of Authority revenues to secure payment and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(3) A pledge of assets of the Authority, other than those assets that the Mayor allows the Authority to use through an intra-District transfer, including mortgages and obligations securing mortgages, to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(4) The proposed use of gross income from any mortgages owned by the Authority and payment of principal of mortgages owned by the Authority;

(5) The proposed use of reserves or sinking funds;

(6) The proposed use of proceeds from the sale of revenue bonds and a pledge of proceeds to secure payment;

(7) Any limitations on the issuance of revenue bonds, including terms or issuance and security, and the refunding of outstanding or other revenue bonds;

(8) Procedures for amendment or abrogation of a contract with holders of the revenue bonds, the amount of bonds, the holders of which must consent to the amendment, and the manner in which consent may be given;

(9) Any vesting in a trustee property, power, and duties, which may include the power and duties of a trustee appointed by holders of the revenue bonds;

(10) Limitations or abrogations of the right of holder of the revenue bonds to appoint a trustee;

(11) A defining of the nature of default in the obligations of the Authority to the holders of the revenue bonds and providing the rights and remedies of holders of the bonds in the event of default, including the right to the appointment of a receiver, in accordance with the general laws of the District and this chapter; and

(12) Any other provisions of like or different character that affect the security of holders of the revenue bonds.

(d) A pledge of the Authority is binding from the time it is made. Any funds, or property pledged, are subject to the lien of a pledge without physical delivery. The lien of a pledge is binding as against parties having any tort, contract, or other claim against the Authority regardless of notice. Neither the resolution stipulating the terms for sale of Authority bonds nor any other instrument creating a pledge need be recorded.

(e) The signature of any officer of the Authority which appears on a bond shall remain valid if that person ceases to hold office.

(f) The Authority may secure bonds by a trust indenture between the Authority and a corporate trustee that has trust company powers within the District.

(g) A trust indenture of the Authority may contain provisions for protecting and enforcing the rights and remedies of holders of the revenue bonds in accordance with the provisions of the resolution authorizing the sale of bonds.

(h) Subject to preexisting agreements with the holders of the revenue bonds, the Authority may purchase its own revenue bonds which may then be cancelled. The price the Authority pays in purchasing its own revenue bonds shall not exceed the following limits:

(1) If the revenue bonds are redeemable, the price shall not exceed the redemption price then applicable plus accrued interest to the next interest payment; or

(2) If the bonds are not redeemable, the price shall not exceed the redemption price applicable on the first date after the purchase upon which the bonds or notes become subject to redemption plus accrued interest to that date.

(i) The Authority may establish special or reserve accounts in furtherance of its authority under this chapter. Notwithstanding subsections (a) and (b) of this section and other applicable District law, and subject to agreements with holders of the bonds, the Authority shall manage its own funds, and may invest funds not required for disbursement in a manner consistent with industry practices.

(j) The bonds of the Authority are legal instruments in which public officers and public bodies of the District, insurance companies, insurance company associations, and other persons carrying on an insurance business, banks, bankers, banking institutions, including savings and loan associations, building and loan associations, trust companies, savings banks, savings associations, investment companies, and other persons carrying on a banking business, administrators, guardians, executors, trustees and other fiduciaries, and other persons authorized to invest in bonds or in other obligations of the District, may legally invest funds, including capital, in their control. The bonds are also securities which legally may be deposited with, and received by, public officers and public bodies of the District or any agency of the District for any purpose for which the deposit of bonds or other obligations of the District is authorized by law.

(k) The revenue bonds shall be special obligations of the District. The bonds shall be without recourse to the District. The bonds shall not be general obligations of the District, shall not be a pledge of or involve the faith and credit or the taking power of the District, shall not constitute a debt of the District, shall not constitute lending of the public credit for private undertakings as prohibited in § 1-233(a)(2), and shall not constitute debt for purposes of § 47-313.

(l) The revenue bonds shall not give rise to any pecuniary liability to the District and the District shall have no obligation with respect to the purchase of the bonds.

(m) Nothing contained in the revenue bonds, in the financing documents, or in the closing documents shall create any obligation on the part of the District

to make payments with respect to the bonds from sources other than those listed for that purpose in this chapter.

(n) The District shall not have liability for the payment of any issuance costs or for any transaction or event to be effected by the financing documents. (Apr. 18, 1996, D.C. Law 11-111, § 210, 43 DCR 548.)

Section references. — This section is referred to in § 43-1683.

Legislative history of Law 11-111. — See note to § 43-1661.

Effective date. — Section 701 of D.C. Law 11-111 provided that the act, with the exception of sections 208 through 211, shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(c)), and a 30-day period of Congressional review as provided in section 602 (c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87

Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register. Sections 208 through 211 of the act shall take effect upon the enactment by Congress of the legislation proposed in title IV of the act, or of substantially similar legislation.

Amendments to §§ 47-334, 47-304, and 47-313 substantially similar to those proposed in title IV of D.C. Law 11-111 were enacted by Pub. L. 104-184, § 2, 110 Stat. 1696, August 6, 1996.

References in text. — Section 602(a)(2) of the District of Columbia Self-Government and Governmental Reorganization Act, referred to in (k), is codified as § 1-233(a)(2).

Section 603 of the District of Columbia Self-Government and Governmental Reorganization Act, referred to in (k), is codified as § 47-313.

§ 43-1681. Delegation of Council authority to issue bonds.

The District pledges to the Authority and any holders of bonds that, except as provided in this chapter, the District will not limit or alter rights vested in the Authority to fulfill agreements made with holders of the bonds, or in any way impair the rights and remedies of the holders of the bonds until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the holders of the bonds are fully met and discharged. The Authority is authorized to include this pledge of the District in any agreement with the holders of the bonds. (Apr. 18, 1996, D.C. Law 11-111, § 211, 43 DCR 548.)

Legislative history of Law 11-111. — See note to § 43-1661.

Effective date. — Section 701 of D.C. Law 11-111 provided that the act, with the exception of sections 208 through 211, shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(c)), and a 30-day period of Congressional review as provided in

section 602 (c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register. Sections 208 through 211 of the act shall take effect upon the enactment by Congress of the legislation proposed in title IV of the act, or of substantially similar legislation.

Amendments to §§ 47-334, 47-304, and 47-313 substantially similar to those proposed in title IV of D.C. Law 11-111 were enacted by Pub. L. 104-184, § 2, 110 Stat. 1696, August 6, 1996.

§ 43-1682. Transfer of funds.

Repealed. April 9, 1997, D.C. Law 11-184, § 202(i), 43 DCR 4265.

Emergency act amendments. — For temporary repeal of section, see § 2(i) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160), § 2(i) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(i) of the Water and Sewer Authority Second Congressional Review Emergency

Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), see § 2(i) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Section 3 of D.C. Act 11-466 provides for the application of the act.

Legislative history of Law 11-184. — See note to § 43-1661.

§ 43-1683. District repayment option.

(a) The District retains the right to direct the Authority to purchase its own bonds and notes, subject to the terms and conditions of § 43-1680(h), for the purpose of dissolving or altering the Authority after such bonds and notes are cancelled or defeased.

(b) The District further retains the right to direct the Authority to defease bonds, and the authority shall do so, conditioned upon the District providing moneys, which together with the moneys of the Authority available for defeasance, would be sufficient to satisfy the requirements of § 43-1683.1(a)(1). (Apr. 18, 1996, D.C. Law 11-111, § 213, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(j), 43 DCR 4265.)

Section references. — This section is referred to in § 43-1677.

Effect of amendments. — D.C. Law 11-184 added (b).

Emergency act amendments. — For temporary amendment of section, see § 2(j) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(j) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43

DCR 5686), § 2(j) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(j) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Section 3 of D.C. Act 11-466 provides for the application of the act.

Legislative history of Law 11-111. — See note to § 43-1661.

Legislative history of Law 11-184. — See note to § 43-1661.

§ 43-1683.1. Defeasance of bonds.

(a) The Authority's bonds shall no longer be considered outstanding and unpaid and shall be deemed fully met and discharged for the purposes of § 43-1677(e) and the security provided by the pledges of and liens on, revenues, assets, and property, if the Authority:

(1) Deposits with an escrow agent, which shall be a bank, trust company, or national banking association with requisite trust powers, in a separate defeasance escrow account, established and maintained by the escrow agent solely at the expense of the Authority and held in trust for the bond owners, sufficient moneys or direct obligations of the United States, principal of and interest on which, when due and payable, will provide sufficient moneys,

together with moneys so deposited, to pay when due the principal and interest of bonds issued by the Authority to be defeased; and

(2) Delivers to the defeasance escrow agent an irrevocable letter of instruction to apply the moneys or investments to the payment of the principal of and interest on the bonds issued by the Authority to be defeased as they become due and payable.

(b) The defeasance escrow agent shall not invest the defeasance escrow account in any investment callable at the option of its issuer if the call could result in less than sufficient moneys being available for the purposes required by this section.

(c) The defeasance escrow account specified in subsection (a) of this section may be established and maintained without regard to any limitations placed on these accounts by any act or resolution of the Authority now existing or adopted after this act becomes effective, except for this chapter. (Apr. 18, 1996, D.C. Law 11-111, § 213a, as added Apr. 9, 1997, D.C. Law 11-184, § 202(k), 43 DCR 4265.)

Section references. — This section is referred to in § 43-1683.

Effect of amendments. — D.C. Law 11-184 added this section.

Emergency act amendments. — For temporary addition of section, see § 2(k) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary addition of section, see § 2(k) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of

1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(k) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(k) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Section 3 of D.C. Act 11-466 provides for the application of the act.

Legislative history of Law 11-184. — See note to § 43-1661.

§ 43-1684. Procurement system inapplicable.

Except as provided in § 43-1687(b), § 1-1181.1 *et seq.*, shall not apply to the Authority. (Apr. 18, 1996, D.C. Law 11-111, § 214, 43 DCR 548.)

Section references. — This section is referred to in § 43-1672.

Legislative history of Law 11-111. — See note to § 43-1661.

§ 43-1685. Merit personnel system inapplicable.

(a) Except as provided in this section and in § 43-1687(b), no provision of § 1-601.1 *et seq.*, shall apply to employees of the Authority except as follows:

(1) Titles V and XVII shall apply to all employees of the Authority; and

(2) Titles XII, XXI, XXII, and XXVI shall apply to employees transferred to the Authority who are covered under the Civil Service Retirement System and the District of Columbia Defined Contribution Pension Plan; provided, that all Authority employees continuously employed by the District government since December 31, 1979, shall be guaranteed rights and benefits at least equal to those currently applicable to such persons under provisions of law and rules and regulations in force prior to April 18, 1996.

(b) An employee of the Authority who is covered under the District of Columbia Defined Contribution Pension Plan, who meets the minimum

requirements for participation in a retirement plan established by the Authority, may, upon written notice to the Authority, elect, instead, to be covered by the Authority's plan. (Apr. 18, 1996, D.C. Law 11-111, § 215, 43 DCR 548.)

Section references. — This section is referred to in § 43-1672.

Legislative history of Law 11-111. — See note to § 43-1661.

§ 43-1686. Charges and fees and rate setting.

(a) The Authority shall collect and abate charges, fees, assessments, and levies for services, facilities, or commodities furnished or supplied by it.

(b) The Authority shall, following notice and public hearing, establish and adjust retail water and sewer rates. The District members of the Board shall establish the retail water and sewer rates prior to the Board's consideration of the Authority's budget. The water and sewer rates levied by the Authority shall only be a source of revenue for the maintenance of the District's supply of water and sewage systems, and shall constitute a fund exclusively to defray any cost of the Authority.

(c) In the absence of applicable standards, charges shall be levied and collected as determined by the Authority in accordance with § 43-1615(b).

(d) The Authority may impose additional charges and penalties for late payment of bills.

(e) The Authority is authorized to shut off the water distribution to any building, establishment, or other place upon failure of the owner or occupant thereof to pay the charges within 90 days from the date of rendition of the bill. (Apr. 18, 1996, D.C. Law 11-111, § 216, 43 DCR 548.)

Legislative history of Law 11-111. — See note to § 43-1661.

§ 43-1687. Transition provisions.

(a) Until the initial meeting of the Board, but for not longer than 180 days from April 18, 1996, the existing management structure of the Water and Sewer Utility Administration, Department of Public Works shall serve as the operator of the Authority, thereafter, the Water and Sewer Utility Administration of the Department of Public Works shall be abolished.

(b) Until the Board establishes a personnel system and a procurement system, and until rules and regulations pertaining to the Board's duties have been promulgated, § 1-1181.1 *et seq.*, and § 1-601.1 *et seq.*, and implementing rules and regulations shall continue to apply to the Authority.

(c) The administration of payroll services and personnel services, including benefits administration, shall be provided to the Authority by the Office of Pay and Retirement and the District of Columbia Office of Personnel at a negotiated fee. These services may be terminated by the Authority upon written notice to each provider.

(d) All collective bargaining agreements shall remain in effect until they expire, or until they are renegotiated by the Authority, whichever comes first,

unless otherwise agreed upon by the parties to the collective bargaining agreements.

(e) The Treasurer of the District of Columbia shall collect retail water and sewer payments on the Authority's behalf until the Authority notifies the Treasurer that an independent collection system has been established and that retail water and sewer customers have been notified of any changes in payment procedures. Water and sewer payments collected by the Treasurer shall be expeditiously deposited into the Fund and shall not be commingled with the Cash Management Pool, the General Fund, or any other funds or accounts of the District of Columbia, except that payments made to District cashiers may be deposited directly into a District disbursement account until the Authority notifies the Treasurer that an independent disbursement system has been established. Dedicated revenues received by the District Treasurer shall be subject to any pledge of the Authority as if deposited into the Fund.

(f) The Treasurer of the District of Columbia is authorized to transfer funds from the Fund to a District disbursement account in order to pay the necessary and reasonable expenses of the Authority until the Authority notifies the Treasurer that an independent disbursement system has been established. (Apr. 18, 1996, D.C. Law 11-111, § 217, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(l), 43 DCR 4265.)

Section references. — This section is referred to in § 43-1677.

Effect of amendments. — D.C. Law 11-184 added (e) and (f).

Emergency act amendments. — For temporary amendment of section, see § 2(l) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(l) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43

DCR 5686), § 2(l) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(l) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Section 3 of D.C. Act 11-466 provides for the application of the act.

Legislative history of Law 11-111. — See note to § 43-1661.

Legislative history of Law 11-184. — See note to § 43-1661.

§ 43-1688. Existing agreements.

This chapter shall not serve as an amendment, alteration, modification, or repeal of any contract or any regional agreement to which the District government is a party, including the 1985 Blue Plains Intermunicipal Agreement. (Apr. 18, 1996, D.C. Law 11-111, § 218, 43 DCR 548; Apr. 9, 1997, D.C. Law 11-184, § 202(m), 43 DCR 4265.)

Effect of amendments. — D.C. Law 11-184 rewrote the section.

Emergency act amendments. — For temporary amendment of section, see § 2(m) of the District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary amendment of section, see § 2(m) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43

DCR 5686), § 2(m) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(m) of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Section 3 of D.C. Act 11-466 provides for the application of the act.

Legislative history of Law 11-111. — See note to § 43-1661.

Legislative history of Law 11-184. — See note to § 43-1661.

§ 43-1689. Transfer of function and redelegation of authority.

(a) All of the functions transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, that have been delegated to the Water and Sewer Utility Administration are hereby transferred to the Water and Sewer Authority as follows:

(1) Pursuant to Part III (I), authority to plan, manage, and contract for design, engineering, and construction of the District's water and sewer facilities;

(2) Pursuant to Part III (K), authority to provide complete water and sewer utility systems including the provision of an adequate and potable water supply; water distribution, measurement, and billing; the collection and treatment of sewage; and the construction and maintenance of all related facilities on a cost basis; and

(3) Pursuant to Part IV (E), the functions of the Department of Environmental Services as set forth in Commissioners Order No. 71-255, dated July 27, 1971, except for the functions of the Office of Environmental Standards and Quality Assurance, which were transferred to the Department of Consumer and Regulatory Affairs, on the effective date of Reorganization Plan No. 4 of 1983.

(b) Any other functions not specified in this section that are now delegated to or vested in the Administrator of the Water and Sewer Utility Administration are hereby transferred to the Water and Sewer Utility Authority, including the power to obtain and enforce liens in accordance with §§ 43-1529 and 43-1610. (Apr. 18, 1996, D.C. Law 11-111, § 219, 43 DCR 548.)

Legislative history of Law 11-111. — See note to § 43-1661.

References in text. — Reorganization Plan

No. 4 of 1983, referred to throughout (a), is printed in volume 1 of the D.C. Code at page 323.

§ 43-1690. No inurement to private persons; exemption from District taxation.

(a) All rights, property and assets of the Authority shall transfer automatically to the District government upon dissolution of the Authority.

(b) None of the property, assets or earnings of the Authority shall inure to any private person or entity.

(c) The Authority, its income, property, and transactions shall be exempt from District taxes. (Apr. 18, 1996, D.C. Law 11-111, § 220, as added Apr. 9, 1997, D.C. Law 11-184, § 202(n), 43 DCR 4265.)

Effect of amendments. — D.C. Law 11-184 added this section.

Emergency act amendments. — For temporary addition of section, see § 2(n) of the

District of Columbia Water and Sewer Authority Emergency Amendment Act of 1996 (D.C. Act 11-293, July 9, 1996, 43 DCR 4160).

For temporary addition of section, see § 2(n)

of the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-397, October 9, 1996, 43 DCR 5686), § 2(n) of the Water and Sewer Authority Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-466, December 30, 1996, 44 DCR 165), and § 2(n) of

the Water and Sewer Authority Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-48, March 31, 1997, 44 DCR 2105).

Section 3 of D.C. Act 11-466 provides for the application of the act.

Legislative history of Law 11-184. — See note to § 43-1661.

§ 43-1691. Water and Sewer Authority budget.

(a) *In General.* — The District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996 shall prepare and annually submit to the Mayor, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for the operation of the Authority for the year. All such estimates shall be forwarded by the Mayor to the Council for its action pursuant to §§ 47-304 and 47-313(c), without revision but subject to his recommendations. Notwithstanding any other provision of this Act, the Council may comment or make recommendations concerning such annual estimates, but shall have no authority under this Act to revise such estimates.

(b) *Permitting Expenditure of Excess Revenues for Capital Projects in Excess of Budget.* — Notwithstanding the amount appropriated for the District of Columbia Water and Sewer Authority for capital projects for a fiscal year, if the revenues of the Authority for the year exceed the estimated revenues of the Authority provided in the annual budget of the District of Columbia for the fiscal year, the Authority may obligate or expend an additional amount for capital projects during the year equal to the amount of such excess revenues. (Dec. 24, 1973, 87 Stat. 800, Pub. L. 93-198, title IV, § 445a, as added Aug. 6, 1996, 110 Stat. 1698, Pub. L. 104-184, § 4(a); Aug. 5, 1997, 111 Stat. 784, Pub. L. 105-033, § 11714(a).)

Effect of amendments. — Public Law 104-184 added this section.

Public Law 105-33 designated the existing paragraph as (a); and added (b).

Effective date of Pub. L. 105-33. — Section 11714(c) provided that the amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 1996.

References in text. — The “Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996,” referred to in subsection (a), is D.C. Law 11-111.

“This Act,” referred to twice in subsection (a) of this section, is the District of Columbia Self-Government and Governmental Reorganization Act (Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198).

Section 11717(b) of Title XI of Pub. L. 105-33, 111 Stat. 786 provided that any reference in law or regulation to the “District of Columbia Self-Government and Governmental Reorganization Act” shall be deemed to be a reference to the “District of Columbia Home Rule Act,” which is set out in Volume 1.

CHAPTER 17. UNDERGROUND FACILITIES PROTECTION.

Sec.	Sec.
43-1701. Definitions.	43-1706. Damage caused by excavation or demolition.
43-1702. Formation and operation of 1-call center.	43-1707. Liability for damages; civil penalty.
43-1703. Availability of permit drawings.	43-1708. Mandamus or injunction.
43-1704. Notification prior to excavation.	43-1709. Emergency excavation or demolition.
43-1705. Requirements of person responsible for excavation or demolition.	43-1710. Severability.
	43-1711. Effective date.

§ 43-1701. Definitions.

For the purposes of this chapter:

(1) The terms “demolition” or “demolish” mean any operation by which a structure or mass of material is wrecked, razed, moved, or removed by means of any tool, equipment, or explosive.

(2) The terms “excavate” or “excavation” mean any operation in which earth, rock, or other material in or on the ground is moved, removed or otherwise displaced by means of any tool, equipment, or explosive, and include but are not limited to grading, trenching, digging, ditching, drilling, boring, augering, tunnelling, scraping, cable or pipe plowing and driving, wrecking, razing, moving, or removing any structure or mass of material.

(3) The term “one-call center” means any organization among the purposes of which is to notify 2 or more public utility operators of planned excavation activities or demolition in a specified area.

(4) The term “person” means any individual, firm, joint venture, partnership, corporation, association, agency of the District of Columbia government, or other governmental body or authority, except the United States government, and shall include any trustee, receiver, assignee, or personal representative thereof.

(5) The term “public utility operator” means a person, other than an agency of the District of Columbia, who supplies or transports any of the following materials or services by means of a utility line:

- (A) Gas of any kind, including flammable, toxic, or corrosive gas;
- (B) Liquids other than water, including such liquids as coal slurry, petroleum, petroleum products, or other hazardous liquids;
- (C) Electric energy;
- (D) Communication services;
- (E) Sewage disposal and drainage;
- (F) Water; or
- (G) Steam; except, that the District of Columbia government shall not be included.

(6) The term “underground facility” means any item of personal property which is buried or placed below ground, or submerged for use in connection with the storage or conveyance of water, sewage, electronic, telephonic, or teletype communications, electric energy, oil, gas, or other substances, and shall include, but not be limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those portions of poles located below the ground.

(7) The term “utility line” means any cable, pipeline, or other conduit installed underground by which a public utility operator furnishes materials or services. (Mar. 4, 1981, D.C. Law 3-129, § 2, 28 DCR 264.)

Legislative history of Law 3-129. — Law 3-129 was introduced in Council and assigned Bill No. 3-240, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 25, 1980 and December 9, 1980, respectively. Signed by the Mayor on January 7, 1981, it was assigned Act No. 3-338 and transmitted to both Houses of Congress for its review.

§ 43-1702. Formation and operation of 1-call center.

All public utility operators doing business or having underground facilities in the District of Columbia shall form and operate a one-call center for the mutual receipt of notification of proposed excavation or demolition operations within the District of Columbia. The one-call center, to which notification concerning proposed excavation or demolition should be directed, shall file with the District of Columbia Department of Transportation the telephone number and address of such center, and a list of the name and address of each public utility operator participating in the operation of the center. (Mar. 4, 1981, D.C. Law 3-129, § 3, 28 DCR 264.)

Legislative history of Law 3-129. — See note to § 43-1701.

Transfer of functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 43-1703. Availability of permit drawings.

The District of Columbia Department of Transportation shall make available to each public utility operator a copy of all approved permit drawings, including those which bear the exact nature and location of all excavation to be carried out, as they are issued to persons for excavation or demolition in public space where utility facilities exist. Applicants for permits will provide additional copies of plans as required for this purpose. (Mar. 4, 1981, D.C. Law 3-129, § 4, 28 DCR 264.)

Legislative history of Law 3-129. — See note to § 43-1701.

Transfer of functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 43-1704. Notification prior to excavation.

(a) Except as provided in § 43-1709, no person shall excavate in a street, highway, public space, or on private property, or demolish a building without first notifying, by telephonic or teletype, at least 48 hours, but not more than 10 days (excluding Saturdays, Sundays, and legal holidays), prior to the commencement of the proposed excavation or demolition, each public utility operator which may have underground facilities in the area of the proposed excavation. Such telephonic or teletype notification shall be accomplished by

notifying the one-call center within the time limit prescribed, which shall in turn notify the appropriate public utility operators.

(b) The telephonic or teletype notice required by subsection (a) of this section must contain the name, address, and telephone number of the person responsible for the proposed excavation or demolition, the utility job number, the planned starting date, the anticipated duration, the type of excavation or demolition work to be conducted, the location of the proposed excavation or demolition, and whether or not explosives are to be used.

(c) If it is determined by a public utility operator that a proposed excavation or demolition is planned in such proximity to an underground facility that the facility may be damaged, dislocated, or disturbed, the public utility operator shall within 48 hours (excluding Saturdays, Sundays, and legal holidays) respond by marking, staking, locating, or otherwise providing the approximate location of the public utility operator's underground facilities.

(d) When the actual excavation or demolition operation enters the immediate vicinity of an underground facility or utility line transporting natural gas, the person responsible for the excavation or demolition shall expose the underground facility or utility line by hand digging; provided, that a test pit hand dug by the District government, which locates the utility line, shall meet the requirements of this subsection. For purposes of this subsection, the immediate vicinity of the underground facility or utility line shall be defined as a space within 18 inches from the nearest point on the underground facility.

(e) If the public utility operator, notified by the one-call center, determines that its underground utility lines or facilities will not be affected by the excavation or demolition, the public utility operator shall advise the person who proposes to excavate or demolish that marking is unnecessary.

(f) No person shall begin excavation prior to the notification of each public utility operator through the one-call center, or prior to the marking required by this section, or prior to the determination by the public utility operator that marking is unnecessary. (Mar. 4, 1981, D.C. Law 3-129, § 5, 28 DCR 264.)

Section references. — This section is referred to in §§ 43-1705 and 43-1709.

Legislative history of Law 3-129. — See note to § 43-1701.

Editor's notes. — Near the beginning of the

first sentence of subsection (a), the reference to § 43-1709 was substituted for a reference to § 43-1710, to correct an error in D.C. Law 3-129.

§ 43-1705. Requirements of person responsible for excavation or demolition.

(a) In addition to the requirements of § 43-1704, each person responsible for an excavation or demolition operation shall:

(1) Plan the excavation or demolition to avoid damage to or minimize interference with underground facilities in and near the construction area;

(2) Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, taking into account the known limit of control of such cutting edge or point as may be reasonably necessary to avoid damage to such underground facility; and

(3) Provide such support for underground facilities in and near the construction area, including support during backfilling operations, as may be reasonably necessary for the protection of such facilities.

(b) If a facility is damaged, under no circumstances shall a contractor backfill an excavation without first receiving permission from the utility operator whose facility was damaged.

(c) Nothing in this chapter shall excuse the failure to obtain a permit to excavate in public space in compliance with § 7-620.

(d) Persons and operators excavating for routine maintenance, including patch-type paving, will not be required to comply with the notification and marking procedures of this chapter, if they excavate within the limits of the original excavation, and if the excavation does not exceed 12 inches in depth below the grade existing prior to said excavation. (Mar. 4, 1981, D.C. Law 3-129, § 6, 28 DCR 264.)

Legislative history of Law 3-129. — See note to § 43-1701.

§ 43-1706. Damage caused by excavation or demolition.

(a) Except as provided in subsection (b) of this section, each person responsible for any excavation or demolition operation which results in damage to an underground facility shall, immediately upon discovery of such damage, notify the operator of such facility of the location and the nature of the damage, and shall allow the operator reasonable time to accomplish necessary repairs before continuing the excavation or demolition in the immediate area of the damaged facility.

(b) Each person responsible for any excavation or demolition operation that results in damage to an underground facility, permitting the escape of any flammable, toxic, or corrosive gas or liquid shall, immediately upon discovery of such damage, notify the public utility operator, the Metropolitan Police Department, and the District of Columbia Fire Department, and shall take any other action which may be reasonably necessary to protect persons and property. (Mar. 4, 1981, D.C. Law 3-129, § 7, 28 DCR 264.)

Legislative history of Law 3-129. — See note to § 43-1701.

§ 43-1707. Liability for damages; civil penalty.

(a) If any underground facility is damaged through the fault of any person, that person shall be liable to the owner of the underground facility for the total cost of the repair or, if necessary, the replacement of the damaged underground facility.

(b) If any underground facility is damaged by any person carrying out excavation or demolition without having complied with the notice provisions of this chapter, that person shall be liable to the owner of the underground facility for treble the cost of the repair or replacement of the damaged underground facility.

(c) Any person who violates any provision of this chapter shall be subject to a civil penalty not to exceed \$1,000 for each such violation. Action to recover the civil penalties provided for in this section shall be brought by the Corporation Counsel of the District of Columbia in the Superior Court of the District of Columbia. All penalties recovered from such action, including reasonable attorney's fees, shall be paid into the General Fund of the District of Columbia. (Mar. 4, 1981, D.C. Law 3-129, § 8, 28 DCR 264.)

Legislative history of Law 3-129. — See note to § 43-1701.

§ 43-1708. Mandamus or injunction.

If any person proposes to engage or is engaging in excavation or demolition in the District of Columbia without complying with this chapter, or in a negligent or unsafe manner, or by using a procedure which has resulted in, or is likely to result in, damage to an underground facility, the owner of such underground facility or the Corporation Counsel may commence an action in the Superior Court of the District of Columbia, for the purpose of having such negligent or unsafe excavation or demolition stopped and prevented, by either mandamus or injunction. The Court may join as parties any persons necessary or proper to make its judgment or process effective and, if appropriate, shall issue a final order granting such relief. (Mar. 4, 1981, D.C. Law 3-129, § 9, 28 DCR 264.)

Legislative history of Law 3-129. — See note to § 43-1701.

§ 43-1709. Emergency excavation or demolition.

Compliance with the notice requirements of § 43-1704 shall not be required for an emergency excavation or demolition involving an imminent danger to life, health, or property; provided, that reasonable precautions have been taken to protect underground facilities. The appropriate public utility operators shall, in any event, be notified directly and as soon as possible. An imminent danger to life, health, or property exists whenever there is a substantial likelihood that loss of life, health, or property will result before the procedures under § 43-1704 can be fully complied with. (Mar. 4, 1981, D.C. Law 3-129, § 10, 28 DCR 264.)

Section references. — This section is referred to in § 43-1704.

Legislative history of Law 3-129. — See note to § 43-1701.

§ 43-1710. Severability.

If any provision of this chapter, or the application thereof, shall in any circumstances be held invalid, the validity of the remainder of the chapter, and the validity of any different application of any such provision, shall not be affected. (Mar. 4, 1981, D.C. Law 3-129, § 11, 28 DCR 264.)

Legislative history of Law 3-129. — See note to § 43-1701.

§ 43-1711. Effective date.

This chapter shall take effect 180 days after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto), as provided in § 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, § 1-233(c)(1)). (Mar. 4, 1981, D.C. Law 3-129, § 12, 28 DCR 264.)

Legislative history of Law 3-129. — See note to § 43-1701.

CHAPTER 18. CABLE TELEVISION.

- | | |
|---|---|
| Sec. | Sec. |
| 43-1801. Legislative purposes. | 43-1825. Insurance; performance bond; indemnification of District. |
| 43-1802. Definitions; rules of construction. | 43-1826. Rates and service offerings. |
| 43-1802.1. Council authorized to grant franchise; franchise required; condition and term of franchise. | 43-1826.1. Subscriber fees. |
| 43-1803. Establishment of the District of Columbia Cable Television Advisory Committee. | 43-1826.2. Rate regulation. |
| 43-1804. Duties of the Advisory Committee. | 43-1827. Inspection of books and records; filing and posting certain enumerated documents. |
| 43-1805. Establishment of Office of Cable Television and Telecommunications; appointment of Executive Director. | 43-1828. [Repealed]. |
| 43-1806. Powers and responsibilities of Office. | 43-1829. Public Access Corporation. |
| 43-1807. Duties of Executive Director. | 43-1829.1. Public access. |
| 43-1807.1. Cable Television Fund. | 43-1830. Operational requirements. |
| 43-1808. Powers of Public Service Commission. | 43-1831. [Repealed]. |
| 43-1809. Mandatory provisions of request for proposal. | 43-1832. Maintenance service; complaint procedure; interruption of service; customer service standards. |
| 43-1810. Submission of applications. | 43-1833. Installation of facilities. |
| 43-1811. [Repealed]. | 43-1834. Construction and service schedules; maps. |
| 43-1812. Evaluation of applications. | 43-1835. [Repealed]. |
| 43-1813. Submission of proposed franchise agreement. | 43-1836. Limits on franchisee's recourse. |
| 43-1813.1. Grant of franchises. | 43-1837. Compliance not excused by failure to enforce franchise. |
| 43-1814. Amendment of franchise agreement. | 43-1838. Effect of specific time for performance. |
| 43-1815. Franchise revocation procedure. | 43-1839. Rights reserved to District. |
| 43-1816. Franchise renewal procedure. | 43-1840. Franchisee not to discriminate. |
| 43-1817. Termination of franchise; forced purchase by the District. | 43-1841. Affirmative action requirements. |
| 43-1818. [Repealed]. | 43-1842. Minority contracting requirements. |
| 43-1819. Arbitration panel. | 43-1843. Local hiring and subcontracting policy. |
| 43-1820. Transfer of ownership to other than District. | 43-1844. Restrictive easement; unlawful attachment for access or use. |
| 43-1821. Transfer of ownership to District. | 43-1844.1. Landlord-tenant relationship. |
| 43-1822. District's right to assign. | 43-1845. Protection of privacy. |
| 43-1823. Franchisee's obligation as trustee. | 43-1846. Costs. |
| 43-1824. Annual franchise fee; quarterly and annual reports; audit; financial statement. | 43-1847. Obscenity laws. |
| | 43-1848. "Rent-a-citizen" practice discouraged. |
| | 43-1848.1. Obtaining services without compensation unlawful. |
| | 43-1849. Civil penalties; prosecutions. |

§ 43-1801. Legislative purposes.

The Council of the District of Columbia finds, determines, and declares:

(1) That after careful investigation, the rates, services, and operation of cable television companies in the District of Columbia are affected with a public interest.

(2) That it should be, and is declared, the policy of the District of Columbia government to provide fair regulation of cable television companies in the interest of the public.

(3) That the objects of such regulations are:

(A) To promote adequate, economic, and efficient cable television service to the citizens and residents of the District of Columbia;

(B) To encourage the optimum development of the educational, economic, and community-service potentials of the cable television medium;

(C) To provide just and reasonable rates and charges for cable television system services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices;

(D) To promote and encourage harmony between cable television companies and their subscribers and customers;

(E) To cooperate with other jurisdictions and with the federal government in providing and coordinating efforts to regulate cable television companies effectively in the public interest;

(F) To encourage the accessibility of minority ownership of cable television companies, and minority involvement in the development and operation of cable television companies in the District of Columbia; and

(G) To encourage ongoing citizen participation in the operation of the cable system.

(4) Repealed.

(5)(A) That, after careful investigation, the Council finds the existence of a past and present history of discrimination, underrepresentation, and underutilization of minority residents which pervades all aspects of the District of Columbia's television broadcast industry, including employment, programming, and ownership. The Council intends to provide opportunities for minorities to remedy the discrimination that has denied them access to the communications media, its operations, management, and policy boards by encouraging substantial, meaningful minority ownership of the cable franchise.

(B) Further, that national statistics on the level of minority representation and participation in the cable television industry evidence a continuing underrepresentation and underutilization of minorities and as a consequence, minimal economic benefit accruing to minority communities through the growth of this multi-billion dollar industry; this is true even in geographic locales where minorities are the majority or near majority populace.

(6) The Council further recognizes the advent of cable television in the District of Columbia as a crucial opportunity to minimize and remedy the historic social and economic isolation of large segments of the District of Columbia's minority population.

(7) It is the intent of this legislation that District of Columbia minority residents be included in substantial numbers, as nearly as possible reflective of their numbers in the overall populace of the District of Columbia, in the development, operation, and ownership of the cable television system. That in order to promote maximum, broad-based minority participation and control within the District of Columbia's cable industry, the Council requires that all cable television franchisee's implement and maintain, throughout the term of the franchise, strong affirmative action policies and programs for the benefit of the minority groups specified in this chapter.

(8) That in order to promote diversity of programming and in order to adequately represent the views of minorities residing in the District of Columbia, the Council shall adopt a policy to encourage minority ownership of telecommunications properties.

(9) That in order to avoid charges of influence-peddling and political favoritism, which in many jurisdictions have resulted in an acrimonious, divisive, and distracting franchising process, the cable industry practice of enlisting local supporters, commonly called “rent-a-citizen” is specifically discouraged. (Aug. 21, 1982, D.C. Law 4-142, § 2, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 3(1), 30 DCR 4289; Nov. 15, 1983, D.C. Law 5-42, § 4(a), 30 DCR 4999.)

Legislative history of Law 4-142. — Law 4-142, “Cable Television Communications Act of 1981”, was introduced in Council and assigned Bill No. 4-35, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on March 9, 1982, and June 8, 1982, respectively. Approved without signature by the Mayor, it was assigned Act No. 4-208 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 5-42. — Law 5-42 was introduced in Council and assigned Bill No. 5-29, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on July 5, 1983, and September 6, 1983, respectively. Signed by the Mayor on September 22, 1983, it was assigned Act No. 5-67 and transmitted to both Houses of Congress for its review.

Appropriations authorized. — Public Law 104-194, 110 Stat. 2363, the District of Colum-

bia Appropriations Act, 1997, provided for the Cable Television Enterprise Fund, established by § 43-1801 et seq., \$2,511,000 and 8 full-time equivalent positions (including \$2,179,000 and 8 full-time equivalent positions from local funds and \$332,000 from other funds).

Purpose. — Among the reasons for which the District adopted its cable regulation scheme was to avoid a patchwork of cable operators providing cable to the more affluent areas of the city while other areas were not offered service. *District of Columbia v. AMSAT*, 118 WLR 2257 (Super. Ct. 1990).

Applicability to pre-existing cable operators. — Cable provider operating prior to the enactment of the Cable Act held no legitimate claim of entitlement to continue operating in a manner contrary to the provisions of the Cable Act. *District of Columbia v. AMSAT*, 118 WLR 2257 (Super. Ct. 1990).

The D.C. Cable Act requires franchises from pre-existing cable operators. *District of Columbia v. AMSAT*, 118 WLR 2257 (Super. Ct. 1990).

§ 43-1802. Definitions; rules of construction.

For purposes of this chapter:

(1) The term “ancillary service” means any communication service, other than basic service, provided over the franchise’s system by the franchisee directly or as a carrier for the franchisee’s subsidiaries, affiliates, or any other person engaged in communication services, including, but not limited to, burglar alarms, data transmission facsimile reproduction, meter reading, home shopping, leased channel programming, and any other service for which a separate charge is made.

(1A) The term “Advisory Committee” means the District of Columbia Cable Television Advisory Committee established by § 43-1803.

(2) Repealed.

(3) The term “basic service” means the tier of cable service containing local broadcast signals; public, educational, and municipal access channels, unless a franchise agreement requires that any such access channels be carried on another tier of cable service; and any additional video programming services voluntarily offered by a franchisee.

(4) The term “Board” means the Public Access Board established by § 43-1829.

(4A) The term “cable operator” means any person or group of persons who provide cable service over a cable system and, directly or through one or more affiliates, owns a significant interest in such cable system, or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

(4B) The term “cable service” means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(5) The term “cable television converter” means a device used to facilitate the reception of non-standard television signals on conventional television receivers.

(6) The term “cable television system” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community. This term does not include a facility:

(A) That serves only to retransmit the television signals of one or more television broadcast stations;

(B) That serves subscribers without using any public right-of-way;

(C) Of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act of 1934, approved June 19, 1934 (48 Stat. 1070; 47 U.S.C. § 201*et seq.*), except that such facility shall be considered a “cable television system” (other than for purposes of the Communications Act of 1934, 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers; or

(D) Of any electric utility used solely for operating its electric utility systems.

(7) The term “Commission” means the Public Service Commission of the District of Columbia established by § 43-401.

(8) The term “Council” means the Council of the District of Columbia.

(9) Repealed.

(10) The term “District” means the District of Columbia government.

(11) Repealed.

(11A) The term “educational access channel” means a specifically designated noncommercial channel on any cable television system which is reserved for educational use.

(12) The term “Executive Director” means the Director of the Office of Cable Television and Telecommunications established by § 43-1805.

(13) The term “fair market value” means the price that a willing buyer would pay to a willing seller for the cable system as a going concern, but with no value allocated to the franchise itself.

(14) The terms “Federal Communications Commission” and “FCC” mean the federal agency as presently constituted by the Communications Act of 1934 (47 U.S.C. § 151 *et seq.*).

(15) The term “franchise” means the rights granted hereunder to construct and operate a cable television system along the public ways in the

District of Columbia, or within specified areas in the District of Columbia, and is not intended to include any license or permit required for the privilege of transacting and carrying on a business within the District of Columbia as may be required by laws of the District.

(16) The term “franchisee” means the natural person, partnership, domestic and foreign corporation, association, joint venture, or organization of any kind granted a franchise by the Council under this chapter and its lawful and authorized successor, transferee, or assignee.

(17) The term “franchise territory” means all or any portion of the District of Columbia for which a franchise has been granted.

(18) The term “full width of the improvement” means the width of the original excavation plus space on each side of the excavation necessary to “shore up” the backfill to restrict settling of dirt.

(19) The term “gross revenues” means all revenue derived directly or indirectly from the operation or use of all or part of a cable television system franchised pursuant to this act by the franchisee, its affiliates, subsidiaries, parents, and any person in which the Franchisee has a financial interest including, but not limited to, revenue from regular subscriber service fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, and advertising revenues. This term shall not include any revenues derived solely from the provision of telecommunications services, as defined by 47 U.S.C. § 153(r)(51), or any taxes on services furnished by a franchisee herein imposed directly upon any subscriber or user by any governmental unit and collected by a franchisee on behalf of said governmental unit. This term shall also include all revenues defined in the franchise agreement.

(20) The term “leased channel” means a channel or portion of a channel on any cable system which is reserved for carriage of program material provided by persons who lease channel time from the franchisee for the presentation of programs.

(21) Repealed.

(22) The term “material” means any visual material shown on a cable television system, whether or not accompanied by a soundtrack, or any sound recording played on a cable television system.

(23) The term “Mayor” means the Mayor of the District of Columbia.

(24) The term “minority” means Black Americans, Native Americans, Hispanic Americans, Oriental Americans who, by virtue of being a member of the foregoing groups, have been found by the Council to be economically and socially disadvantaged because of historical discrimination practiced against these groups by the institutions within the United States of America.

(25) The term “municipal channels” means specifically designated channels on any cable television system which are reserved by this chapter solely for the use of the District.

(26) The term “net income” means the amount remaining after deducting from gross revenues all of the direct expenses associated with the operation of the cable television system including the franchise fee, interest, depreciation, and federal or state income taxes.

(27) The term "Office" means the independent Office of Cable Television and Telecommunications established by § 43-1805.

(27A) The term "other programming service" means information that a cable operator makes available to all subscribers generally.

(28) The term "ownership in a business" means an economic relationship with a business (any corporation, partnership, sole proprietorship, firm, enterprise, association, organization, self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted for profit) as an officer, director, employee, or holder of stock in such a business with a fair market value of at least \$1,000.

(29) The term "public access channel" means a specifically designated, noncommercial channel on any cable television system which is reserved for noncommercial use by members of the public on a nondiscriminatory basis.

(30) The term "public way" means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, or other public right-of-way including public utility easements or rights-of-way, and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the District which may be utilized for the purpose of installing and maintaining the franchisee's cable system after negotiation of terms and conditions mutually satisfactory to the District, the franchisee, and the appropriate public utility.

(30A) The term "rent-a-citizen" means the practice of giving an ownership interest in a cable business to a resident of the District of Columbia at no cost or for less than actual value with the intent to use the fact of the resident's ownership in the cable business as a means of influencing the eventual award of a cable franchise in the District of Columbia. The term "rent-a-citizen" includes the practice of enlisting District of Columbia residents as directors, officers, employees, or consultants in name and title only with the intent to use the fact of the resident's association with the cable business as a means of exerting influence over the eventual award of a cable franchise in the District of Columbia.

(31) Repealed.

(32) Repealed.

(33) The term "subscriber" means a member of the general public who receives cable services distributed by a cable television system and does not further distribute it.

Words in the singular number include the plural number.

The word "shall" is always mandatory and not merely directory. (Aug. 21, 1982, D.C. Law 4-142, § 3, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, §§ 2(a)-(h), 3 (2)-(4), 30 DCR 4289 June 1, 1984, D.C. Law 5-85, § 2(b), 31 DCR 1864; Apr. 9, 1997, D.C. Law 11-210, §§ 2(a), 3(a), 43 DCR 4702; Apr. 9, 1997, D.C. Law 11-255, § 46(a), 44 DCR 1271.)

Section references. — This section is referred to in §§ 43-1833 and 43-1842.

Effect of amendments. — D.C. Law 11-210 inserted (1A), (4A), (4B), (11A) and (27A); rewrote (3), (6) and (19); repealed (9), (31), and (32); inserted "and Telecommunications" in (12)

and (27); added "for the cable system as a going concern, but with no value allocated to the franchise itself" in (13); inserted "and authorized" in (16); and substituted "cable service" for "broadcast programming and any ancillary service" in (33).

D.C. Law 11-255 inserted “also” in the last sentence in (19).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 5-85. — Law 5-85 was introduced in Council and assigned Bill No. 5-357, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on March 13, 1984, and March 27, 1984, respectively. Signed by the Mayor on April 5, 1984, it was assigned Act No. 5-123 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-210. — Law 11-210, the “Cable Television Franchise Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-173, which

was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 6, 1996, it was assigned Act No. 11-386 and transmitted to both Houses of Congress for its review. D.C. Law 11-210 became effective April 9, 1997.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on , 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 43-1802.1. Council authorized to grant franchise; franchise required; condition and term of franchise.

(a) The Council of the District of Columbia may grant, in accordance with and pursuant to the procedures set forth in this chapter, one or more revocable non-exclusive franchises to construct, operate, maintain, and reconstruct a cable television system within the public ways of the District of Columbia, and along easements dedicated for compatible uses pursuant to section 621(a) (2) of the Communications Act of 1934, approved October 30, 1934 (98 Stat. 2786; 47 U.S.C. § 541(a) (2)).

(b) No person or persons, corporation, whether publicly or privately held, partnership, business venture, association, or institution shall operate a cable television system within the District of Columbia without first obtaining a franchise pursuant to this chapter. Nothing in this section shall be construed as infringing upon the plenary power of the United States, the authority vested in the District to make use of municipal and educational channels established in a franchise agreement pursuant to this chapter, or the authority and right vested in the citizens of the District of Columbia to make use of the public access channels established in a franchise agreement pursuant to this chapter.

(c) Any franchise granted pursuant to this section is conditioned under the District’s reservation of the right to grant franchises to other persons, firms, or corporations to construct and operate a cable television system within the District of Columbia within the same or other areas of the District of Columbia at any time.

(d) Any franchise granted pursuant to this chapter shall be valid for a maximum term not to exceed 15 years from the date the franchise is granted and shall be subject to prior revocation pursuant to procedures established in this chapter. The Office may recommend, and the Council may grant, a franchise for a term of less than 15 years. (Aug. 21, 1982, D.C. Law 4-142, § 3a, as added Oct. 22, 1983, D.C. Law 5-36, § 2(i), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(b), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210, in (a), inserted “non-exclusive” and added the language beginning “and along easements”; rewrote (b); deleted “similar” following “grant” in (c); and, in (d), substituted “not to exceed 15 years” for “of 15 years” and added the second sentence.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — Law 5-36, “Cable Television Communications Act of 1981 Clarification Amendment Act of 1983,” was introduced in Council and assigned Bill No. 5-170, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on June 21, 1983, and July 5, 1983, respectively. Signed by the Mayor on July 28, 1983, it was assigned Act No. 5-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-210. — See note to § 43-1802.

Short title. — The first section of D.C. Law 5-36 provided: “That this act may be cited as the ‘Cable Television Communications Act of 1981 Clarification Amendment Act of 1983.’”

District of Columbia cable television franchise award. — See note to § 43-1813.1.

Modification of Cable Television Franchise Agreement. — See note to § 43-1813.1.

Approval of amended limited partnership agreement. — Pursuant to Resolution 6-624, the “Cable Television Franchise Limited Partnership Review and Approval Resolution of 1986,” effective April 15, 1986, the Council approved the amended and restated partnership between District Cablevision, Inc. and

Tele-Communications, Inc., to be known as District Cablevision Limited Partnership.

Tele-Communications, Inc. and Liberty Media Corporation Reorganization Disapproval Resolution of 1994. — Pursuant to Resolution 10-368, effective June 24, 1994, the Council disapproved the District Cablevision Limited Partnership’s Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise.

The Nashville Network Reinstatement Resolution of 1996. — Pursuant to Resolution 11-411, approved July 3, 1996, and effective upon publication on July 19, 1996, Council directed the district Cablevision Limited Partnership to return The Nashville Network to District Cablevision.

First Amendment not violated. — The burden on First Amendment freedoms resulting from the franchise requirement is no more than is essential to promote substantial government interests. *District of Columbia v. AMSAT*, 118 WLR 2257 (Super. Ct. 1990).

While some franchise applicants meet the established franchise criteria and others do not, this does not render qualified applicants a “favored class of speaker.” The District of Columbia’s establishment of criteria which all cable operators must meet, if they hope to gain a franchise, is content-neutral regulation. *District of Columbia v. AMSAT*, 118 WLR 2257 (Super. Ct. 1990).

Applicability to pre-existing cable operators. — The D.C. Cable Act requires franchises from pre-existing cable operators. *District of Columbia v. AMSAT*, 118 WLR 2257 (Super. Ct. 1990).

§ 43-1803. Establishment of the District of Columbia Cable Television Advisory Committee.

(a) There is established a District of Columbia Cable Television Advisory Committee to assist and advise the Office of Cable Television and Telecommunications regarding the development, regulation, and design of cable television systems in the District of Columbia which will serve the public interest.

(b) The Advisory Committee shall consist of 13 members selected as follows:

(1) Two representatives from the Council of the District of Columbia, to be designated by the Council;

(2) One representative from the Consortium of Universities (“Consortium”), to be designated by the Consortium;

(3) One representative of the Department of Public Works, to be designated by the Director of the Department of Public Works;

(4) One representative from the Office of the Assistant City Administrator for Economic Development, to be selected by the Mayor;

(5) One member of the District of Columbia School Board, to be selected by the President of the School Board;

(6) One registered engineer, with appropriate expertise, to be selected by an appointment process established by the Mayor;

(7) One representative from the local religious community, to be selected by an appointment process established by the Mayor;

(8) One senior citizen, residing in the District of Columbia, to be selected by an appointment process established by the Mayor;

(9) One member of the Board of Directors of the Public Access Corporation, to be designated by the Chairperson of the Board of Directors;

(10) Two concerned citizens from the District of Columbia, with appropriate technological expertise, to be selected by an appointment process established by the Mayor; and

(11) One representative from any of the Advisory Neighborhood Commissions in the District of Columbia, to be selected by an appointment process established by the Mayor. (Aug. 21, 1982, D.C. Law 4-142, § 4, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(j), 30 DCR 4289; Mar. 14, 1985, D.C. Law 5-159, § 16(a), 32 DCR 30; Apr. 9, 1997, D.C. Law 11-210, § 2(c), 43 DCR 4702.)

Cross references. — As to minority contracting, see subchapter II of Chapter 11 of Title 1.

Section references. — This section is referred to in § 43-1802.

Effect of amendments. — D.C. Law 11-210 rewrote the section.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 5-159. — Law 5-159 was introduced in Council and assigned

Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-210. — See note to § 43-1802.

Cited in District of Columbia v. AMSAT, 118 WLR 2257 (Super. Ct. 1990).

§ 43-1804. Duties of the Advisory Committee.

(a) The Advisory Committee shall, in all its deliberations and decisions, and in discharging the duties and responsibilities set forth in this section, consider and promote the safety, health, and welfare of the people of the District of Columbia.

(b) The Advisory Committee shall:

(1) Advise the Office in the general oversight of cable television operation;

(2) Assess the cable needs of the community and recommend policy changes; and

(3) Meet on a quarterly basis to, among other things, educate Advisory Committee members regarding technology such as fiber optics, interdiction and design, programming trends, community access, and competing technologies.

(c) The Office shall promulgate all rules and procedures deemed necessary to carry out the purposes of this section, including, but not limited to, rules and procedures relating to the Advisory Committee's reporting requirements, the commission of surveys or studies to be used in ascertaining community needs, and the internal functioning of the Advisory Committee. (Aug. 21, 1982, D.C.

Law 4-142, § 5, 29 DCR 2872; May 20, 1983, D.C. Law 5-9, § 2, 30 DCR 1791; Aug. 2, 1983, D.C. Law 5-18, § 2, 30 DCR 3326; Oct. 22, 1983, D.C. Law 5-36, § 2(k), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(d), 43 DCR 4702.)

Section references. — This section is referred to in §§ 43-1803 and 43-1809.

Effect of amendments. — D.C. Law 11-210 rewrote the section.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-9. — Law 5-9 was introduced in Council and assigned Bill No. 5-147, which was retained by Council. The Bill was adopted on first and second readings on March 15, 1983, and March 29, 1983, respectively. Signed by the Mayor on April 6, 1983, it was assigned Act No. 5-23 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-18. — Law 5-18 was introduced in Council and assigned

Bill No. 5-148, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-35 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

Cited in *District of Columbia v. AMSAT*, 118 WLR 2257 (Super. Ct. 1990).

§ 43-1805. Establishment of Office of Cable Television and Telecommunications; appointment of Executive Director.

There is established within the executive branch of the District of Columbia government as a subordinate agency an Office of Cable Television and Telecommunications which shall be administered by an Executive Director appointed by the Mayor and confirmed by the Council. No person shall be eligible to hold the office of Executive Director who has not been a bona fide resident of the District of Columbia for at least 3 years immediately preceding his or her nomination or who has voted or claimed residence elsewhere during this period. The Executive Director shall not have, or have had within the 3 years preceding his or her nomination, any ownership, business interest, or business affiliation in or with any cable franchisee in the District of Columbia. The nomination of the first Executive Director shall be submitted to the Council for its confirmation at any time after the date upon which this section takes effect, but shall be submitted no later than June 1, 1984. (Aug. 21, 1982, D.C. Law 4-142, § 6, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(l), 30 DCR 4289; June 1, 1984, D.C. Law 5-85, § 2(a), 31 DCR 1864; Apr. 9, 1997, D.C. Law 11-210, § 2(e), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 inserted “and Telecommunications” in the first sentence.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 5-85. — See note to § 43-1802.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1806. Powers and responsibilities of Office.

(a) Repealed.

(b) The Office shall be the administrative agency within the District

responsible for protecting and promoting the public interest in cable television and assuring that the policies and provisions of the cable television laws of the District are properly executed.

(b-1) The Office shall receive and review applications for a franchise for a cable television system and shall negotiate cable franchise agreements. The Office shall promulgate rules and procedures to be used for the application process including, but not limited to, guidelines, instructions, an application form, a model proposed franchise agreement, and an application fee.

(c) In carrying out the mandate contained in subsection (b) of this section, the Office shall have the power to issue rules to carry out the powers conferred upon the Office by this chapter which are necessary to effectuate the charge to promote and protect the public interest in cable television. All rules shall be issued by the Office in accordance with the requirements of subchapter I of Chapter 15 of Title 1, and shall be approved by the Council, by resolution.

(d) The Office shall:

(1) Monitor franchisee compliance with the provisions of this chapter and any cable television franchise agreement entered into with the District.

(2) Coordinate, manage, and oversee the use of all municipal and educational channels.

(3) Make any reasonable requests of the franchisee or franchisees as are required by this chapter or which are necessary to protect and promote the public interest in cable television.

(4) Impose reasonable conditions and restrictions on the franchisee or franchisees as are necessary to protect the safety, health, and welfare of the citizens of the District of Columbia, and as are necessary to protect and promote the public interest in cable television.

(5) Resolve disagreements between franchisees and subscribers, public users, or private users of cable television. In cases where a franchisee has not satisfactorily responded to subscriber, public, or private user complaints, the Office may order adjustments including any of the following:

(A) Require the franchisee or franchisees to adjust billing charges for services based upon the Office's evaluation of the deficiencies involved, and, if necessary, require the franchisee or franchisees to make reasonable refunds; and

(B) In cases where requests for service have been ignored or unfulfilled for whatever reason, the Office may require the franchisee or franchisees to provide service in response to all reasonable requests. The Office shall ensure that the franchisee or franchisees provide uniform access to the cable system in order to avoid economic discrimination.

(6) Encourage the use of access channels among the widest range of institutions, groups, and individuals within the District of Columbia.

(7) Educate the public on the benefits and uses of cable television.

(8) Conduct periodic evaluations of the cable system with the cooperation of the franchisee or franchisees and, pursuant thereto, make recommendations to the Council for amendments to this chapter or to the franchise agreement.

(9) Submit an annual report to the Council which shall include, but need not be limited to, an account of franchise fees received and distributed, a

review of any plans submitted during the year by the franchisee for development of new services, and a report on franchisee compliance with this chapter and any franchise agreement entered into with the District.

(10) Issue rules which protect the privacy rights and civil liberties of cable subscribers. These rules shall include, but need not be limited to:

(A) Provisions regarding the collection, use, sale, or distribution by cable operators or others of information obtained by cable operators concerning opinion preferences, consumer product purchases, and credit ratings of individual subscribers;

(B) The requirements that warnings be given to subscribers participating in 2-way cable subscriber opinion samples, viewer participation games, product purchase campaigns, and other cable features involving an indication of individual subscriber opinion or preferences, so that subscribers will be aware that responses are being registered and recorded;

(C) A restriction of the use and availability of motion-sensing features of cable; and

(D) Other matters promoting the public interest and the convenience of the subscribing and viewing public.

(11) Perform any other functions required of the Office by this chapter.

(e) The Office may purchase personal property insurance to cover the risk to the District, the District's officers, employees, or authorized agents for loss of or damage to equipment, facilities, other materials, or personal property used by the Office to produce programming for the municipal channels, or used by the Office to perform the Office's authorized functions. The amount of insurance purchased by the Office shall be subject to the approval of the Mayor.

(f) The Office of Cable Television ("OCT") shall sign a cooperative agreement with the Public Access Corporation or contract for services with another corporation to produce shows for municipal channels 13 and 16. (Aug. 21, 1982, D.C. Law 4-142, § 7, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(m), 30 DCR 4289; June 1, 1984, D.C. Law 5-85, § 2(c), 31 DCR 1864; May 10, 1989, D.C. Law 7-231, § 47, 36 DCR 492; July 25, 1990, D.C. Law 8-151, § 2, 37 DCR 3741; Sept. 26, 1995, D.C. Law 11-52, §§ 807, 807a, 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-210, § 2(f), 43 DCR 4702; Apr. 9, 1997, D.C. Law 11-255, § 56, 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-210 inserted (b-1); and added a (d)(12) (now (d)(2)); and substituted "District, the District's officers, employees, or authorized agents for loss" for "District of Columbia ("District") government, the District government's officers, employees, or authorized agents of loss" in (e).

D.C. Law 11-255 made a technical correction to Law 11-210 which redesignated the provision added by § 2(f)(2) of D.C. Law 11-210 to be subsection (d)(2) of this section.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 5-85. — See note to § 43-1802.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-151. — Law 8-151, the "Office of Cable Television Personal Property Insurance Authorization Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-545, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 1, 1990, and May 15, 1990, respectively.

Signed by the Mayor on May 30, 1990, it was assigned Act No. 8-209 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-253. — Law 10-253, the “Multiyear Budget Spending Reduction and Support Temporary Act of 1995,” was introduced in Council and assigned Bill No. 10-857. The Bill was adopted on first and second readings on December 21, 1994, and January 3, 1995, respectively. Deemed approved without the signature of the Mayor on January 27, 1995, it was assigned Act No. 10-401 and transmitted to both Houses of Congress for its review. D.C. Law 10-253 became effective on March 23, 1995.

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995,

and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-210. — See note to § 43-1802.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on , 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Cited in *Wilson v. Kelly*, App. D.C., 615 A.2d 229 (1992); *Wilson v. Dixon*, 120 WLR 33 (Super. Ct. 1992).

§ 43-1807. Duties of Executive Director.

The Executive Director of the Office of Cable Television and Telecommunications shall have the general duties of administering the Office, including preparation of the budget, hiring of staff and other personnel, scheduling matters before the Office, maintaining records, and such other duties as may be required by law. (Aug. 21, 1982, D.C. Law 4-142, § 8, 29 DCR 2872; June 1, 1984, D.C. Law 5-85, § 2(d), 31 DCR 1864; Apr. 9, 1997, D.C. Law 11-210, § 2(g), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 inserted “and Telecommunications.”

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-85. — See note to § 43-1802.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1807.1. Cable Television Fund.

(a) There is established a “Cable Television Fund” into which shall be deposited all revenue owed and accruing to the District from the establishment, regulation, and operation of a cable television system within the District of Columbia. The Cable Television Fund shall be an enterprise fund as defined in § 47-373(2)(D), and shall be used for the payment of public costs incurred by the District in connection with the implementation, administration, and regulation of cable television within the District of Columbia. The Executive Director shall administer the Cable Television Fund and receive all payments required by this chapter. All Cable Television Fund deposits shall be secured in a manner consistent with deposits of revenues by the District and shall include, but not be limited, to the following revenue:

- (1) Franchise application fees pursuant to § 43-1806(b-1);
- (2) Franchise award fees pursuant to § 43-1813.1(b);
- (3) Annual franchise fees pursuant to § 43-1824;
- (4) Collections by the District of Columbia on indemnities, insurances, and bonds pursuant to § 43-1825;

(5) Repealed.

(6) All penalties imposed pursuant to § 43-1849.

(b) Repealed. (Aug. 21, 1982, D.C. Law 4-142, § 8a, as added Oct. 22, 1983, D.C. Law 5-36, § 2(n), 30 DCR 4289; Mar. 16, 1988, D.C. Law 7-93, § 3(a), 35 DCR 721; Apr. 9, 1997, D.C. Law 11-210, §§ 2(h), 3(b), 43 DCR 4702.)

Cross references. — As to organization of fund structure, see § 47-373.

Effect of amendments. — Section 2(h) of D.C. Law 11-210 substituted “§ 43-1806(b-1)” for “§ 43-1810(b)” in (a)(1).

Section 3(b) of D.C. Law 11-210 deleted (a)(5).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 7-93. — See note to § 43-1848.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1808. Powers of Public Service Commission.

(a) The Public Service Commission shall regulate the rates, terms, and conditions for cable television use of existing utility company rights-of-way located within the District of Columbia, including use of existing utility poles and underground conduits.

(1) The Public Service Commission shall regulate the rates, terms, and conditions of existing rights-of-way use in accordance with federal law and FCC rules and regulations, and shall ensure that all rates, terms, and conditions are just and reasonable.

(2) In regulating the rates, terms, and conditions required by this section, the Public Service Commission shall consider the interests of both cable television subscribers and utility consumers.

(b) The Public Service Commission shall resolve disagreements (including, but not limited to, the use of public ways by the franchisee or franchisees to install and maintain the franchisee’s cable system) among the franchisees and public utilities. (Aug. 21, 1982, D.C. Law 4-142, § 9, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(o), 30 DCR 4289.)

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

§ 43-1809. Mandatory provisions of request for proposal.

(a) The request for proposal developed and issued by the Design Commission in accordance with subsection (b) of this section shall contain the following:

- (1) Instructions concerning the preparation and filing of applications.
- (2) Minimum requirements which all applicants are expected to meet.
- (3) Guidelines used by the Design Commission in evaluating applicant proposals.

(4) A nonrefundable application fee.

(5) A provision requiring that a minimum of 10% of total channel capacity shall be provided at no charge to the District; that the District shall have exclusive control of these channels which shall be designated as municipal channels; and that when these municipal channels have become fully utilized,

additional channels shall be made available to the District at fair market value.

(6) A provision requiring that the cable television system be installed to comply in all respects with the capacity, capability, and technical performance requirements set forth in federal law and FCC rules and regulations for cable television including applicable amendments thereto.

(7) A provision mandating that the cable television system shall be constructed with the capacity for 2-way interactive capability; that applicants shall include a demonstration of a plan to implement this capability in the future; and that the franchisee or franchisees shall provide 2-way interactive capability when the District, through the Office, so directs.

(8) A provision that the franchisee or franchisees shall furnish to the District a map of suitable scale indicating the areas to be served and the schedule for the staging of service as part of the formal application; that the map shall identify all neighborhoods, developments, communities, streets, and public buildings in the District of Columbia; and that the map and service schedule shall be made a part of the franchise agreement and the schedule shall include the installation of cable service which shall be available to every household within the franchise territory.

(9) A provision requiring that the franchisee or franchisees shall possess the capability to interconnect its cable television system with any federal government system located within the District of Columbia, and other cable television systems or broadband communications facilities located in contiguous communities including those in the State of Maryland and the Commonwealth of Virginia.

(10) A provision that the franchisee or franchisees shall provide without charge within the franchise territory at least one service outlet to each fire station, police station, public library, and public school building used for municipal purposes as may be designated by the District through the Office.

(11) A provision that the Design Commission shall give favorable consideration to franchise applicants whose plans include aggressive, innovative, and result-oriented policies and programs for the maximum utilization of minorities.

(11A)(A) A provision that the Design Commission shall give favorable consideration to franchise applicants whose ownership structure contains meaningful minority participation, preferably of a local nature.

(B) For the purposes of this section, the term "meaningful minority participation" means ownership by minorities of at least 35% of an applicant's local ownership structure and 35% of an applicant's local governing body. The adoption and implementation of the 35% requirement shall not constitute a discriminatory practice prohibited under § 43-1840.

(12) A provision that the franchisee or franchisees shall be required to provide a minimum of 6 public access channels free of charge on a nondiscriminatory basis.

(13) A provision specifying the percent of total channel capacity to be set aside for public access purposes.

(14) A provision encouraging applicants to propose creative rates and service offerings for basic service, including an offering relating to an initial rate period for basic service not to be less than 3 years.

(b) The request for proposal, cable franchise application, and statement of procedures and schedules developed by the Design Commission pursuant to § 43-1804(b)(1) shall be issued by the Design Commission within 3 days following their approval by the Council. If the Council disapproves any part of the request for proposal, cable franchise application, and statement of procedures and schedules, the Chairman of the Council shall return the documents to the Design Commission within 3 days along with a statement of Council recommendations for their revision. The Design Commission shall resubmit to the Council for its approval a revised request for proposal, cable franchise application, and statement of procedures and schedules incorporating all of the revisions recommended by the Council within 15 days following receipt by the Chairperson of the Design Commission of the Council's recommendations.

(c) The request for proposal developed and issued by the Design Commission and approved by the Council, and all instructions, guidelines, criteria, procedures, schedules, rules, requirements, fees, terms, and conditions contained therein, shall apply to all applicants and shall be effective upon approval by resolution of the Council. (Aug. 21, 1982, D.C. Law 4-142, § 10, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2 (p), 30 DCR 4289; Nov. 15, 1983, D.C. Law 5-42, § 4(b), 30 DCR 4999.)

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 5-42. — See note to § 43-1801.

Recommended revision of draft of request for proposals and cable franchise application. — Pursuant to Resolution 5-388, the "Cable Television Franchise Request for Proposals, Applications, and Procedures Recommendations Resolution of 1983," effective October 18, 1983, the Council recommended that the District of Columbia Cable Design Commission revise the draft request for proposals and cable franchise application submitted to the Chairman of the Council, July 1, 1983.

Revised request for proposals approved. — Pursuant to Resolution 5-422, the "Cable Television Franchise Revised Request for Proposals Approval Resolution of 1983," effective November 15, 1983, the Council approved the request for proposals as revised pursuant to the Cable Television Franchise Request for Proposals Applications, and Procedures Recommendations Resolution of 1983.

Standard format proposed franchise agreement approved. — Pursuant to Resolution 5-549, the "Cable Television Franchise Agreement Format Approval Resolution of 1984," effective February 14, 1984, the Council approved the use by the District of Columbia Cable Design Commission of a standard format proposed franchise agreement.

§ 43-1810. Submission of applications.

An application and an executive summary of the application for a cable television franchise shall be submitted to the Office. The application shall state facts and information regarding the applicant and the proposed franchise territory, make a complete disclosure of all those persons holding a financial interest in the entity making the application for a franchise, and include a proposed franchise agreement consistent with the model proposed franchise agreement promulgated by the Office pursuant to § 43-1813(a). An application shall also comply with all other requirements or rules established by the Office.

(Aug. 21, 1982, D.C. Law 4-142, § 11, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(q), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(i), 43 DCR 4702.)

Section references. — This section is referred to in § 43-1807.1.

Effect of amendments. — D.C. Law 11-210 rewrote the section.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1811. Grant of authority.

Repealed. Oct. 22, 1983, D.C. Law 5-36, § 3(5), 30 DCR 4289.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Editor's notes. — This section had been enacted by § 12 of D.C. Law 4-142.

§ 43-1812. Evaluation of applications.

(a) The Design Commission shall evaluate all applications meeting the minimum requirements imposed by this chapter.

(b) In evaluating applications, the Office may enlist the assistance of qualified technical, financial, and legal consultants.

(c) In addition to evaluation of minority participation, local hiring, affirmative action, and other matters required by this chapter, the evaluation of applications shall include, but not be limited to, the following:

(1) A review of each application for internal consistency.

(2) An evaluation of each application for the feasibility of proposed plans.

(3) Evaluation of the financial resources and commitments of each applicant. Applicants shall be evaluated for clearly demonstrated financial resources to build the proposed system and operate the system until it becomes profitable.

(4) Evaluation of the applicant's proposed capital expenses, revenues, and rates for realistic projection. Applicant's projections shall be evaluated to determine the degree to which good performance and a reasonable but not excessive return to the system owner will be insured.

(5) Evaluation of technical design to determine ability to deliver all services proposed and to adapt to and implement new technologies, services, and programming.

(d) Prior to making final evaluations of applications, the Design Commission shall provide for and undertake a clarification of proposals. The Design Commission shall establish clarification procedures with Council approval. Clarification of proposals shall be limited to inconsistencies, vague and contradictory language, vague offerings and promises, requests for additionally needed information, and to making technical corrections in the applications of prospective franchisees. All proposal clarifications shall be initiated by the Design Commission, except that technical corrections may be initiated by applicants.

(e) The Design Commission shall undertake a final evaluation in accordance with procedures established by the Design Commission with Council approval.

Final evaluation of applicants shall include at least one public hearing to be held by the Design Commission to hear final presentations from applicants. Citizens shall be given the opportunity to comment on the applicants and their proposals at any public hearing held pursuant to this section.

(f) After examining the applications submitted pursuant to procedures outlined herein and as further established by the Design Commission upon the approval of the Council, the Chairperson of the Design Commission upon the advice of the Design Commission, shall evaluate and transmit all applications to the Council and shall recommend to the Council those applications which best serve the residents of the District of Columbia.

(g) The Office shall evaluate and recommend approval or denial of a cable service franchise to the Council. This process shall involve an initial evaluation of a prospective franchisee's application and proposed franchise agreement within 90 days of their submission to the Office. During the initial evaluation, the Office will determine whether a final franchise agreement should be negotiated with an applicant. Where the Office determines that a final franchise agreement should not be negotiated with the applicant, it will recommend to the Council that a cable service franchise not be awarded to the applicant and shall transmit to the Council, along with its recommendation, the applicant's proposed franchise agreement and application. Where the Office determines that a final franchise agreement should be negotiated with the applicant, it shall enter into formal discussions with the applicant and shall, within a time period not to exceed 90 days, transmit to the Council, along with its recommendation, a copy of the final franchise agreement and the prospective franchisee's application. (Aug. 21, 1982, D.C. Law 4-142, § 13, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(r), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(j), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 repealed (a), (d), (e) and (f); rewrote (b); and added (g).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

Procedures approved for consideration of applications. — Pursuant to Resolution

5-550, the "District of Columbia Cable Television Design Commission Evaluation and Clarification Procedures Approval Resolution of 1984," effective February 14, 1984, the Council approved the evaluation and clarification procedures for the District of Columbia Cable Television Design Commission to consider applications to construct and operate a cable television system in the District of Columbia, which were submitted by the Commission to the Council on January 12, 1984.

§ 43-1813. Submission of proposed franchise agreement.

(a) The Office shall develop a model proposed franchise agreement.

(b) Each applicant shall submit with its application a proposed franchise agreement.

(c) The proposed franchise agreement shall conform to the rules, requirements, and guidelines established by the Office and shall cover all matters regarding system construction and operation, including, but not limited to, District regulation and authority over the franchise, programming, public, educational, and municipal access, franchise territory, location of facilities and personnel, system design and capacity, area-wide connection, capacity re-

served for leased access, reports and records, maintenance and complaints, ownership and control, police powers of the District, franchise fee, financial and insurance requirements, rights reserved to the District, default and remedies, liquidation damages, notices, service rates and services, and all other terms and conditions. (Aug. 21, 1982, D.C. Law 4-142, § 14, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(s), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(k), 43 DCR 4702.)

Section references. — This section is referred to in § 43-1810.

Effect of amendments. — D.C. Law 11-210 rewrote the section.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1813.1. Grant of franchises.

(a) The Council may grant, by act, one or more franchises for the right to construct and operate a cable television system within the public ways of specified areas of the District of Columbia and, pursuant to section 2 of the Communications Act of 1934, approved October 30, 1934 (48 Stat. 2786; 47 U.S.C. § 541(a) (2)), easements which have been dedicated for compatible uses. A franchise will be granted to an applicant who, in the Council's judgment, will sufficiently serve the public interest, whose construction, technical, and financial plans and arrangements are both feasible and adequate to fulfill the conditions set forth in this chapter, and who meets any other reasonable conditions, items, or requirements established by the Council. All construction, technical, and financial plans and arrangements and conditions shall be specifically incorporated into a franchise awarded to an applicant. No provisions of this act shall be deemed or construed to require the Council to grant a franchise following receipt of any franchise applications.

(b) Each applicant to whom the District grants a franchise shall pay to the District on or before the grant of the franchise a franchise award fee to be set in the act granting the franchise. The payment shall be nonrefundable and shall be made payable by certified check to the order of the D.C. Treasurer. (Aug. 21, 1982, D.C. Law 4-142, § 14a, as added Oct. 22, 1983, D.C. Law 5-36, § 2(t), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(l), 43 DCR 4702.)

Section references. — This section is referred to in § 43-1807.1.

Effect of amendments. — D.C. Law 11-210 rewrote (a); and substituted "on or before" for "within 90 calendar days after" in (b).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

District of Columbia cable television franchise award. — D.C. Law 5-163, the "District of Columbia Cable Television Franchise Award Act of 1984," granted to District

Cablevision, Inc., a revocable franchise for a 15-year period for the authority, right, and privilege to construct, reconstruct, operate, and maintain a cable television system within the District of Columbia. The act provided as follows:

Sec. 2. Findings.

The Council of the District of Columbia finds that:

(a) Pursuant to the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 4-142; D.C. Code, sec. 43-1801 et seq.), the Council of the District of Columbia ("Council") is authorized to grant by act 1 or more revocable franchises for the right to con-

struct and operate a cable television system within the public ways of specified areas of the District of Columbia.

(b) Pursuant to an evaluation and selection process established by the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 4-142; D.C. Code, sec. 43-1801 et seq.), and pursuant to the Negotiation of the Final Terms of a Proposed Agreement for the Award of a Cable Television Franchise for the District of Columbia Designation Resolution of 1984, effective July 10, 1984 (Res. 5-788; 31 DCR 3673), District Cablevision, Inc., ("Grantee") has been determined to be the cable television franchise applicant which will best serve the public interest in the delivery of cable television service to the citizens of the District of Columbia.

(c) Pursuant to the Negotiation of the Final Terms of a Proposed Agreement for the Award of a Cable Television Franchise for the District of Columbia Designation Resolution of 1984, effective July 10, 1984 (Res. 5-788; 31 DCR 3673), the Council directed that negotiations be undertaken with the Grantee by a city negotiating team for the purpose of finalizing the terms of a proposed franchise agreement, subject to Council approval.

(d) The city negotiating team has completed its mandate and has successfully negotiated the final terms of a proposed franchise agreement with the Grantee, the terms of which have been reviewed by the Council and are approved.

Sec. 3. Grant of the Franchise.

Pursuant to Section 14a(a) of the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 4-142; D.C. Code, sec. 43-1813.1(a)), District Cablevision, Inc., a corporation with its principal place of business located within the District of Columbia, is granted of itself, its successors, and assigns a revocable right to construct, reconstruct, operate, and maintain for a 15-year period from the effective date of this act, a cable television system within the entirety of the District of Columbia, subject to the terms, conditions, and requirements specified in the Franchise Agreement ("Agreement") and the laws and regulations of the District of Columbia and the United States applicable to cable television franchises, facilities, and services.

Sec. 4. Terms of the Franchise.

(a) The Grantee shall, in accepting this franchise, meet all terms and conditions of the law of the District of Columbia and the United States applicable to cable television franchises, facilities, and services.

(b) The Agreement (and exhibits A through H thereof) appended to this act specifying terms and conditions accompanying this grant of a franchise is incorporated by reference and made a part of this franchise grant. The

Grantee shall abide in and shall meet all terms and conditions of the Agreement for the entire duration of the franchise term. Any amendment or modification of the Agreement, except to the extent otherwise provided in the Agreement, shall be accomplished by act of the Council.

(c) The terms, conditions, and provisions of the Agreement shall remain in full force and effect notwithstanding any inconsistency or repugnancy with terms, conditions, and provisions of the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 4-142; D.C. Code, sec. 43-1801 et seq.), in effect prior to this act. Any term, condition, or provision of the Cable Television Communications Act of 1981, effective October 22, 1983 (D.C. Law 4-142; D.C. Code, sec. 43-1801 et seq.), in effect prior to this act which is inconsistent or repugnant with a term, condition, or provision of the Agreement shall be deemed repealed by this act to the extent of its inconsistency or repugnancy with the Agreement.

(d) Termination, revocation, and suspension of the franchise shall lie as provided by law and the Agreement. The rights granted by this act shall automatically expire as provided in the Agreement for failure by the Grantee to meet any condition specified in section 3.12.01 of the Agreement. The District of Columbia Office of Cable Television ("Office") shall give the Council notice of a failure by the Grantee to meet any condition specified under section 3.12.01 of the Agreement within 3 days of the failure, and shall publish the notice in the District of Columbia Register. Expiration of franchise rights for failure to meet a condition of section 3.12.01 of the Agreement shall be automatically effective upon the publication of notice by the Office in the District of Columbia Register that the Grantee's rights are terminated by reason of Grantee failure to meet a condition of section 3.12.01 of the Agreement.

(e) The Agreement appended to this act shall be executed by the Grantee before the effective date of this act. All rights and privileges granted pursuant to this act shall automatically terminate upon the failure by the Grantee to execute the Agreement by the time specified in this subsection.

Modification of Cable Television Franchise Agreement. — D.C. Law 6-59, effective November 19, 1985, as amended by § 11 of D.C. Law 6-192, effective February 24, 1987, enacted the Cable Television Franchise Agreement Modification Act of 1985, and D.C. Law 7-93, effective March 16, 1988, enacted the Cable Television Communications Act of 1981 Amendment Act of 1987, to amend the District of Columbia Cable Television Franchise Award Act of 1984, the Cable Television Communications Act of 1981, and the Cable Television Franchise Agreement between District

Cablevision, Inc., and the District of Columbia to modify certain terms, conditions and requirements of the District of Columbia Cable Television Franchise.

Negotiation of final terms of proposed agreement for award of cable TV franchise. — Pursuant to Resolution 5-788, the “Negotiation of the Final Terms of a Proposed Agreement for the Award of a Cable Television Franchise for the District of Columbia Designation Resolution of 1984,” effective July 10, 1984, the Council found that District Cable Television, Inc., was the applicant which would best serve the public interest and whose construc-

tion, technical and financial plans, and arrangements were both feasible and adequate to fulfill the conditions and requirements of law.

Approval of amended limited partnership agreement. — Pursuant to Resolution 6-624, the “Cable Television Franchise Limited Partnership Review and Approval Resolution of 1986,” effective April 15, 1986, the Council approved the amended and restated partnership between District Cablevision, Inc. and Tele-Communications, Inc., to be known as District Cablevision Limited Partnership.

Cited in District of Columbia v. AMSAT, 118 WLR 2257 (Super. Ct. 1990).

§ 43-1814. Amendment of franchise agreement.

(a) The District shall have the right to amend a franchise agreement, upon agreement with the franchisee, when necessary to enable the franchisee to take advantage of advancements in the state-of-the-art which will afford an opportunity to more effectively, efficiently, or economically serve the subscribers. A franchise agreement shall include procedures for amending the agreement pursuant to this section.

(b) Every 3 years following the grant of a franchise, the Council shall hold a public hearing to allow public comment on franchisee performance and to discuss state-of-the-art changes.

(c) The Office shall promulgate regulations governing the amendment of a franchise agreement. (Aug. 21, 1982, D.C. Law 4-142, § 15, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(u), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(m), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 rewrote (a); and added (c).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1815. Franchise revocation procedure.

(a) The Council shall have the right to revoke a franchise pursuant to the revocation provisions contained in a franchise agreement.

(b) The Office shall promulgate rules and procedures for the revocation of a franchise agreement and include provisions governing revocation in a franchise agreement. (Aug. 21, 1982, D.C. Law 4-142, § 16, formerly § 17, 29 DCR 2872; renumbered and amended Oct. 22, 1983, D.C. Law 5-36, § 2(w), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(n), 43 DCR 4702.)

Section references. — This section is referred to in § 29-1207.

Effect of amendments. — D.C. Law 11-210 rewrote the section.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1816. Franchise renewal procedure.

(a) The renewal of a franchise to operate a cable television system shall comply with applicable federal law.

(b) A final franchise renewal or denial shall be by act of the Council.

(c) The Office shall conduct the preliminary assessment that a franchise be renewed or denied. The Office shall promulgate rules and procedures governing the renewal of a franchise agreement.

(d) Upon a decision by the Council to deny renewal, the Council shall, on the expiration date of the franchise, either authorize the District to purchase the assets of the franchisee's cable television system at its fair market value, or the Council may select a new franchisee pursuant to the franchise application process established in this chapter, after a full public proceeding, and cause the new franchisee to purchase the assets at fair market value. (Aug. 21, 1982, D.C. Law 4-142, § 17, formerly § 16, 29 DCR 2872; renumbered and amended Oct. 22, 1983, D.C. Law 5-36, § 2(v), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(o), 43 DCR 4702.)

Section references. — This section is referred to in § 29-1207.

This section is referred to in § 43-1819.

Effect of amendments. — D.C. Law 11-210 rewrote the section.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1817. Termination of franchise; forced purchase by the District.

(a) If, at any time during the term of the franchise, the Council determines, based on findings by the Office, that the franchisee has materially breached the terms and conditions imposed by this chapter or the franchise agreement, the Council may, by act, either accelerate the term of the franchise, or terminate the franchise, or authorize the District to exercise the right of first refusal to purchase the assets of the franchisee's cable television system at a cost not to exceed an equitable price, or the Council may select a new franchisee to purchase the assets of the franchisee's cable television system at a cost not to exceed an equitable price. Nothing in this subsection shall be construed to abridge the Council's authority to exercise its emergency legislative powers under appropriate circumstances.

(b) Should the Council decide to terminate the franchise the franchisee shall continue to operate the franchise until the Council has selected a new franchisee. The Council shall select a new franchisee by utilizing the same procedures and standards followed to grant the initial franchise under this chapter.

(c) In the event the Council authorizes the District to exercise its option to purchase the assets of the franchise's cable system at an equitable price, it shall give the franchisee written notice of its intent to do so. The franchisee shall, within 7 days of receipt of the notice, enter into bona fide negotiations

with the District for the purpose of consummating the transaction at the earliest possible date.

(d) Any sale or transfer of a cable television system shall comply with section 627 of the Communications Act of 1934, approved October 30, 1984 (98 Stat. 2793; 47 U.S.C. § 547). (Aug. 21, 1982, D.C. Law 4-142, § 18, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(x), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(p), 43 DCR 4702.)

Section references. — This section is referred to in § 43-1819.

Effect of amendments. — D.C. Law 11-210 rewrote the first sentence in (a); substituted “an equitable price” for “the fair market value” in (c); and added (d).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1818. Arbitrary and capricious discontinuance of service by franchisee.

Repealed. Oct. 22, 1983, D.C. Law 5-36, § 3(6), 30 DCR 4289.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Editor’s notes. — This section had been enacted by § 19 of D.C. Law 4-142.

§ 43-1819. Arbitration panel.

(a) In the event the Council elects to authorize the District to purchase the franchisee’s cable system and the fair market value, which is the price required if the Council proceeds under § 43-1816, or an equitable price, which is the price required if the Council proceeds under § 43-1817, for the system cannot be agreed upon, the final price shall be determined by an arbitration panel.

(b) The membership of the arbitration panel shall consist of 3 members. One member shall be selected by the Council, one member shall be selected by the franchisee, and the third member shall be selected by the franchisee representative and the Council representative acting jointly. If the franchisee representative and the Council representative fail to agree as to the third member, either or both members shall apply to the American Arbitration Association and the latter shall select the third member of the arbitration panel. Absent majority agreement to the contrary, the third appointee shall be the presiding officer.

(c) Each party shall bear the expenses of its own representatives. The expenses of arbitration shall be borne as determined by the arbitration panel in its award or findings, but in no event shall the District be obligated for more than one-half of the expenses.

(d) The determination of the majority of the 3-member arbitration panel shall be binding on the parties. (Aug. 21, 1982, D.C. Law 4-142, § 20, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(y), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(q), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 rewrote (a).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1820. Transfer of ownership to other than District.

(a) Except for conveyances of real or personal property in the ordinary course of the operation of a cable television system, neither a franchise, nor a franchisee, nor any rights or obligations of a franchisee in a cable television system or pursuant to a franchise agreement, nor a cable television system, nor any assets of a cable television system, nor the persons holding control of the franchisee, franchise, cable television system, or the assets of the cable television system, shall be transferred, nor shall title therein, either legal or equitable, or any right or interest therein, pass to or vest in any person, either by act of the franchisee, by act of any persons holding control of or any interest in the franchisee, the cable television system, the assets of the cable television system, or the franchise, by operation of law, or otherwise, without the prior consent of the Council.

(b) No person who has an ownership interest exceeding 5% in a franchise, franchisee, cable television system, the assets of a cable television system, the persons holding control of such franchisee, franchise, cable television system, or the assets of a cable television system shall transfer the interest so that the person's ownership interest shall be less than 5% without the prior consent of the Council. No person shall purchase or otherwise acquire an ownership interest exceeding 5% in a franchise, franchisee, cable television system, any assets of a cable television system, the persons holding control of such franchisee, franchise, cable television system, or the assets of a cable television system without the prior consent of the Council.

(c) No change in control of a franchise, franchisee, cable television system, any assets of a cable television system, the persons holding control of such franchise, franchisee, cable television system, or the assets of a cable television system shall occur by act of the franchisee, by act of any persons holding control of, or any interest in, the franchise, franchisee, cable television system, or the assets of a cable television system, or by operation of law or otherwise without the prior consent of the Council.

(d) Nothing in this section shall be construed as suggesting that any other event which could result in a change of ownership or control, regardless of the manner in which such ownership or control is evidenced (e.g., stock, bonds, debt instruments, or other indicia of ownership or control), does not require the consent of the Council if such change would in fact result in a change in ownership or control.

(e) If a transfer is not made according to the procedures set forth in this act and the franchise agreement, the District may take legal or equitable action to set aside, annul, revoke, or cancel:

(1) A franchise;

(2) The transfer of a franchise, franchisee, the rights and obligations of a franchisee in a cable television system or pursuant to the franchise agreement, a cable television system, any assets of a cable television system, or the persons holding control of such franchise, franchisee, cable television system, or assets of a cable television system; or

(3) The transfer of an ownership interest in a franchise, franchisee, the rights and obligations of a franchisee in a cable television system or pursuant to the franchise agreement, a cable television system, any assets of a cable television system or the persons holding control of such franchise, franchisee, cable television system, or assets of a cable television system.

(f) Any sale, transfer, or assignment proposed by a franchisee shall be made by a proposed bill of sale or similar document, a copy of which shall be filed with the Office 90 days prior to any proposed sale, transfer, or assignment.

(g) The Office shall recommend whether approval by the Council of the proposed sale, transfer, or assignment should be granted. The proposed assignee must comply with all provisions of this act and must comply with any provisions regarding a sale, transfer, or assignment established by the Office or a franchise agreement.

(h) The consent of the Council to any sale, transfer, or lease shall not constitute a waiver or release of any of the rights of the District under this chapter and a franchise agreement.

(i) The term “control”, for the purposes of this section, shall mean actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments, or negative control, as the case may be. A rebuttable presumption of the existence of control shall arise from the beneficial ownership, directly or indirectly, by any person, or group of persons acting in concert, of more than 5% of any person. “Control” as used herein may be held simultaneously by more than one person or group of persons.

(j) The term “person”, for the purposes of this section, shall mean any natural person or any association, firm, partnership, joint venture, foreign or domestic corporation, organization or other legally recognized entity, whether for profit or not for profit. This term shall not mean the District.

(k) The term “transfer”, for the purposes of this section, shall include, but not be limited to, any transfer, assignment, lease, sale, disposal of, in whole or in part, by voluntary sale, merger, consolidation, or otherwise by forced or involuntary sale, of a franchise, franchisee, any rights or obligations of a franchisee in a cable television system or pursuant to a franchise agreement, cable television system, any assets of a cable television system, or the persons holding control of a franchise, franchisee, cable television system, or the assets of a cable television system. (Aug. 21, 1982, D.C. Law 4-142, § 21, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(z), 30 DCR 4289; May 16, 1995, D.C. Law 10-255, § 37, 41 DCR 5193; Apr. 9, 1997, D.C. Law 11-210, § 2(r), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 rewrote the section.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1821. Transfer of ownership to District.

Upon payment of the purchase price, the franchisee shall immediately transfer to the District possession and title to all facilities and property, real and personal, related to its cable television system, free from any and all liens and encumbrances not agreed to be assumed by the District in lieu of some portion of the purchase price. The franchisee shall make it a condition of each contract entered into by it, with reference to its operations under this chapter and the franchise agreement, that the contract shall be subject to the exercise of this option by the District and that the District shall have the right to succeed to all privileges and obligations thereof upon the exercise of such option. (Aug. 21, 1982, D.C. Law 4-142, § 22, 29 DCR 2872.)

Legislative history of Law 4-142. — See note to § 43-1801.

§ 43-1822. District's right to assign.

The District shall have the right and power to assign its purchase rights to a successor franchisee selected by the Council following the procedures and standards established by this chapter for the initial award of the franchise. (Aug. 21, 1982, D.C. Law 4-142, § 23, 29 DCR 2872.)

Legislative history of Law 4-142. — See note to § 43-1801.

§ 43-1823. Franchisee's obligation as trustee.

Until such time as the franchisee transfers to the District or to a new franchisee, possession and title to all assets, real and personal, related to its cable television system, the franchisee shall, as trustee for its successor in interest, continue to operate the cable television system under the terms and conditions of this chapter and the franchise agreement and to provide the basic service and all of the services that may be provided at that time. During such interim period, the franchisee shall not sell any of the system assets nor shall the franchisee make any physical, material, administrative or operational change that would tend to: (1) degrade the quality of service to the subscribers; (2) decrease income; or (3) materially increase expenses without the express permission, in writing, of the District or its assignee. The District may seek legal and equitable relief to enforce the provisions of this section. (Aug. 21, 1982, D.C. Law 4-142, § 24, 29 DCR 2872.)

Legislative history of Law 4-142. — See note to § 43-1801.

§ 43-1824. Annual franchise fee; quarterly and annual reports; audit; financial statement.

(a) The franchisee or franchisees shall pay to the District an annual franchise fee equal to 5% of its annual gross revenues or the amount

established in a franchise agreement whichever is greater. The annual franchise fee required by this section shall be set in an amount consistent with federal law and FCC rules and regulations.

(b) The franchisee or franchisees shall file with the Office within 30 days after the expiration of each of the franchisee's fiscal quarters, a financial statement clearly showing the gross revenues received by the franchisee during the preceding quarter. Payment of the quarterly portion of the franchise fee shall be payable by certified check to the order of the D.C. Treasurer at the time the statement is filed. The franchisee or franchisees shall also file, within 120 days after the end of the franchisee's fiscal year, an annual report, prepared and audited by a certified public accountant acceptable to the Office, showing the yearly total gross revenues.

(c) The Office shall have the right, consistent with the provisions of this chapter, to audit and to recompute any amounts determined to be payable under this chapter. The audit shall take place within 12 months following the close of each of the franchisee's fiscal years. Any additional amount due the District as a result of the audit shall be paid within 30 days following written notice to the franchisee by the Office. The notice which the Office sends to the franchisee shall include a copy of the audit report. The cost of the audit shall be borne by the franchisee if it is determined that the franchisee's annual payment to the District for the preceding year is increased thereby by more than 5%.

(d) In the event that any franchise payment of recomputed amount is not made on or before the applicable dates specified herein, the franchisee shall be charged from the due date at the prevailing prime rate of interest.

(e) In the event a franchise is terminated prior to its expiration date and the District invokes its right to purchase the franchisee's cable television system, the franchisee shall file with the Office, within not less than 30 calendar days following the date that ownership and control passes to the District or its assignee, a financial statement clearly showing the gross revenues received by the franchisee since the end of the previous fiscal quarter. The franchisee shall pay the franchise fee due at the time the statement is filed. (Aug. 21, 1982, D.C. Law 4-142, § 25, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(aa), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(s), 43 DCR 4702.)

Section references. — This section is referred to in § 43-1807.1.

Effect of amendments. — D.C. Law 11-210 substituted "the amount established in a franchise agreement" for "\$250,000" in (a).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1825. Insurance; performance bond; indemnification of District.

(a) At all times during the term of franchise, including the time for removal of facilities or management as provided herein, the franchisee shall obtain, pay

all premiums for, and file with the Office written evidence of payment of premiums and executed duplicate copies of the following:

(1) A general comprehensive public liability policy indemnifying, defending, and holding harmless the District, its officers, boards, commissions, agents, and employees from any and all claims made by any person on account of injury to, or death of a person or persons caused by the operations of the franchisee under the franchise herein granted or alleged to have been so caused or alleged to have occurred. The minimum liability for the policy shall be set forth in the franchise agreement.

(2) Property damage insurance indemnifying, defending, and holding harmless the District, its officers, boards, commissions, agents, and employees from and against all claims made by any person for property damage caused by the operation of the franchisee under the franchise herein granted or alleged to have been so caused or alleged to have occurred. The minimum liability for the policy shall be set forth in the franchise agreement.

(3) A performance bond running to the District with good and sufficient surety approved by the Office in a sum set by the Council conditioned upon the faithful performance and discharge of the obligations imposed by this chapter and the franchise awarded hereunder from the date thereof. When basic service is available to more than 50% of the occupied dwelling units within the franchise area, as certified by the Office, the amount of the bond shall be reduced to a sum set by the Council.

(b) The bond and all insurance policies called for herein shall be in a form satisfactory to the Corporation Counsel of the District of Columbia and shall require 30 calendar days written notice of any cancellation to both the Office and the franchisee or franchisees. A franchisee shall, in the event of any cancellation notice, obtain, pay all premiums for, and file with the Office written evidence of payments of premiums and duplicate copies of any insurance so cancelled within 30 calendar days following receipt by the Office or the franchisee of notice of cancellation.

(c) A franchisee shall, at its sole cost and expense, indemnify and hold harmless the District, its officers, boards, commissions, agents, and employees against any and all claims, suits, causes of action, proceedings, and judgments for damage arising out of the cable television system under the franchise. These damages shall include, but not be limited to, penalties arising out of copyright infringements and damages arising out of any failure by the franchisee to secure consent from the owners, authorized distributors, or licensees of programs to be delivered by the franchisee's CATV system whether or not any act or omission complained of is authorized, allowed, or prohibited by the franchise. Indemnified expenses shall include, but not be limited to, all out-of-pocket expenses, such as attorney's fees, and shall also include the reasonable value of any services rendered by the Corporation Counsel of the District of Columbia, or his or her designee.

(d) The foregoing indemnity is conditioned upon the Office's giving the franchisee or franchisees prompt notice of the commencement of any suit or action covered by the terms of this section. Nothing herein shall be deemed to prevent the District from cooperating with a franchisee and participating in

the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the District of any sum by reason of the bond required in this chapter shall be any limitation upon the liability of a franchisee to the District under this chapter. Any sum so received by the District shall be deducted from any recovery which the District shall establish against the franchisee under the terms of this chapter. (Aug. 21, 1982, D.C. Law 4-142, § 26, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(aa), 30 DCR 4289.)

Section references. — This section is referred to in § 43-1807.1.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

§ 43-1826. Rates and service offerings.

All proposed rates and service offerings for cable service shall be specified in the franchise application. An applicant's rates and service offerings shall be specifically incorporated into the applicant's proposed franchise agreement. Any change in such rates and services shall be reflected in an appendix to the final franchise agreement pursuant to provisions for such action in the final franchise agreement. (Aug. 21, 1982, D.C. Law 4-142, § 27, 29 DCR 2872; renumbered and amended Oct. 22, 1983, D.C. Law 5-36, § 2(bb), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(t), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 rewrote the section.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1826.1. Subscriber fees.

(a) The franchisee or franchisees shall publish and make available to each potential subscriber a schedule of all applicable fees and charges for providing cable service.

(b) A franchise shall not, with regard to fees, discriminate or grant any preference or advantage to any person. To the extent permissible under applicable law or regulation, fees may be negotiated between the franchisee and the subscribers, or a committee acting on the behalf of the subscribers, for basic service provided to 10 or more dwelling units within an apartment building, condominium, garden apartment, or townhouse complex under common ownership; to 10 or more room units within hotels and motels; or to commercial establishments engaged in the sale of television receivers. Nothing in this section shall be construed to prohibit a franchisee from instituting preferential or advantageous fees for the elderly, the handicapped, or recipients of public assistance.

(c) Repealed.

(d) To the extent permitted under applicable law or regulation, a franchisee may, for promotional purposes and, at its own discretion, waive, reduce, or suspend connection or monthly service fees for specific or indeterminate periods not to exceed 30 days. (Aug. 21, 1982, D.C. Law 4-142, § 27a, formerly

§ 27, 29 DCR 2872; renumbered and amended Oct. 22, 1983, D.C. Law 5-36, § 2(bb), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, §§ 2(u), 3(e), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 deleted “television” preceding “service” in (a); added “To the extent permitted under applicable law or regulation” to the beginning of the second sentence in (b); repealed (c); and substituted “To the extent permitted under applicable law or regulation, a franchisee may” for “The franchisee or franchisees may” in (d).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1826.2. Rate regulation.

(a) Notwithstanding any other District law, the Office:

(1) Is authorized to regulate cable rates to the maximum extent permitted by law;

(2) Shall follow the rate regulations adopted by the Federal Communications Commission, pursuant to section 2(b) of the Communications Act of 1934, approved October 30, 1934 (48 Stat. 2788; 47 U.S.C. § 543(b)), in regulating cable rates; and

(3) Shall ensure a reasonable opportunity for consideration of the views of interested parties.

(b) The Office shall promulgate rules and procedures governing the regulation of cable rates. (Aug. 21, 1982, D.C. Law 4-142, § 27b, formerly § 27, 29 DCR 2872; renumbered and amended Oct. 22, 1983, D.C. Law 5-36, § 2(bb), 30 DCR 4289; Apr. 26, 1994, D.C. Law 10-101, § 2, 41 DCR 1000; Apr. 9, 1997, D.C. Law 11-210, § 2(v), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 rewrote the section.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 10-59. — Law 10-59, the “Cable Television Communications Act of 1981 Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-354. The Bill was adopted on first and second readings on July 13, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 1, 1993, it was assigned Act No. 10-112 and transmitted to both Houses of Congress for its review. D.C. Law 10-59 became effective on November 20, 1993.

Legislative history of Law 10-101. — Law 10-101, the “Cable Television Communications Act of 1981 Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-356, which was referred to the Committee on Public Services and Youth Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-189 and transmitted to both Houses of Congress for its review. D.C. Law 10-101 became effective on April 26, 1994.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1827. Inspection of books and records; filing and posting certain enumerated documents.

(a) The books and records of a franchisee’s operation within the District of Columbia shall be made available during normal business hours for inspection and audit by the Office.

(b) Copies of a franchisee's schedule of charges, contract or application forms for cable service, policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures, and any other terms and conditions adopted as a franchisee's policy in connection with its subscribers shall be filed with the Office and conspicuously posted in the franchisee's local office. (Aug. 21, 1982, D.C. Law 4-142, § 28, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(cc), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(w), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 substituted "cable service" for "basic service" in (b).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1828. Capability requirements.

Repealed. Oct. 22, 1983, D.C. Law 5-36, § 3(7), 30 DCR 4289.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Editor's notes. — This section had been enacted by § 29 of D.C. Law 4-142.

§ 43-1829. Public Access Corporation.

(a) Within 120 days of the effective date of the act granting a cable television franchise, there shall be established a nonprofit Public Access Corporation ("Corporation") in the District of Columbia for the purpose of facilitating and governing nondiscriminatory use by the public of those specifically designated and reserved noncommercial public access channels of the franchised cable telecommunication system.

(b)(1) The Corporation shall be established pursuant to the requirements of this chapter and in accordance with Chapter 5 of Title 29.

(2) The Corporation shall have no less than 3 categories of members, which categories shall include members constituting a 13-member Board of Directors; members constituting a 15-member Board of Overseers; and associate members.

(3)(A) Within 30 days of the effective date of the act granting a cable television franchise, the Mayor shall submit to the Council for its confirmation the names of 4 District of Columbia residents to serve as chairperson and members of the Board of Directors of the Corporation.

(B) Within 30 days of the effective date of the act granting a cable television franchise, the chairperson of the Council committee having jurisdiction over cable television shall submit to the Council for its confirmation the names of 3 District of Columbia residents to serve as members of the Board of Directors of the Corporation.

(C) Any person the Mayor or a councilmember nominates shall not be an employee of the District of Columbia government, an employee of the cable franchise or any of its contractors, or an investor in the Corporation granted the cable franchise.

(D) Any person nominated shall, to the extent possible, have knowledge of areas which include, but are not limited to, telecommunications law, telecommunications programming, corporate or foundation management, public relations, fund raising, and career development training.

(E) The Board of Directors shall be the governing body of the Corporation and the initial appointments to the Board of Directors shall be for a term of 2 years, after which term the chairperson and 7 members of the Board of Directors shall be elected in accordance with the bylaws of the Corporation. The bylaws of the Corporation shall provide that 2 members of the 13-member Board of Directors shall always be persons nominated by the Mayor and confirmed by the Council; that 2 members of the 13-member Board of Directors shall always be persons nominated by the chairperson of the Council committee having jurisdiction over cable television and confirmed by the Council; and that one member of the 13-member Board of Directors shall always be a person nominated by the District's cable franchisee and confirmed by the Council.

(F) The names of the members of the Corporation shall be public information.

(4)(A) Within 30 days of the effective date of the act granting a cable television franchise, each member of the Council and the Chairman of the Council shall designate one person to serve as a member of the Board of Overseers of the Corporation, and the Mayor shall designate 2 persons to serve as members of the Board of Overseers of the Corporation.

(B) Each member of the Board of Overseers shall be a resident of the District of Columbia.

(C) No member of the Board of Overseers may be an employee of the franchisee or any of its contractors, or an investor in the corporation granted the cable franchise.

(D) The Board of Overseers shall advise the Board of Directors and shall have that authority or responsibilities the bylaws of the Corporation confer and as the Board of Directors may from time to time determine.

(E) The initial Board of Overseers shall serve for a term of 2 years, after which term the Board of Overseers shall be elected in accordance with the bylaws of the Corporation.

(F) To the extent possible, the membership of the Board of Overseers shall include representatives of public interest organizations, civil rights groups, the health and arts communities, labor organizations, business groups, consumers, educators, religious leaders, minorities, women, gays and lesbians, handicapped persons, and child advocates.

(5) Neither members of the Board of Directors nor members of the Board of Overseers shall be compensated for performance of their duties as members of these boards, except that they may be reimbursed for expenses incurred in the performance of their duties as the Corporation shall determine.

(c)(1) Within 15 days of confirmation by the Council, the chairperson of the Board of Directors of the Corporation shall convene a meeting of the Board of Directors and the Board of Overseers of the Public Access Corporation.

(2) Within 60 days of the initial meeting of the Public Access Corporation, the Board of Directors shall have prepared and shall submit to the Board of

Overseers for its review the articles of incorporation and bylaws of the Public Access Corporation.

(3) Within 90 days of the initial meeting of the Public Access Corporation, the Board of Directors shall submit articles of incorporation and bylaws of the Public Access Corporation to the Council for its review, and the articles of incorporation and the bylaws shall not be filed pursuant to Chapter 5 of Title 29, until 30 days after the date that the articles of incorporation and the bylaws have been submitted to the Council for review, but Saturdays, Sundays, legal holidays, and days that pass during a Council recess shall not be counted as part of the 30-day review period described in this paragraph.

(d)(1) The articles of incorporation and bylaws of the Public Access Corporation shall reflect and ensure that the statutory mandates and legislative intent of the Council will be protected and promoted by the Corporation in respect to the issuance of regulations guaranteeing nondiscriminatory use of the franchised cable television system channels reserved for public access, and in respect to the development of opportunities within the community-at-large for training and experience in the field of telecommunications.

(2) The articles of incorporation and bylaws shall permit any resident of the District of Columbia qualified to use the public access facilities to become a member of the Public Access Corporation, with voting rights equal to those of other members, and shall provide for these members to elect the future members of the governing board of the Corporation, except that one member of the Board of Directors shall be nominated by the Mayor and confirmed by the Council and one member shall be nominated by the chairperson of the Council committee having jurisdiction over cable television and confirmed by the Council as directed in this chapter.

(3) The bylaws of the Public Access Corporation shall include a requirement that an annual report of all corporation activities, including a financial audit, be submitted to the Council for its information within 60 days of the end of each fiscal year of the Corporation.

(4) The bylaws of the Public Access Corporation shall include rules for procurement and personnel policies.

(5) The Public Access Corporation shall establish its bank account in a District of Columbia financial institution.

(e) The Corporation's management and use of those channels reserved for public access shall not duplicate programming or services the District may provide on the channels reserved for municipal use. The public access channels are separate and distinct from those channels reserved for the District's exclusive use.

(f)(1) The Corporation may solicit any monies, equipment, and services provided under and in accordance with the terms of an agreement ratified by the District as a part of a grant of franchise for a District cable television system.

(2) The Corporation may receive monies, equipment, and services from other sources, including but not limited to, grants from the District, the federal government, private foundations, businesses, organizations and individuals, membership dues, and donations.

(3) Any monies, equipment, and services received pursuant to this subsection shall be utilized in accordance with the bylaws of the Corporation and in a manner consistent with the purposes and limitations of this chapter.

(g)(1) All assets of the Corporation, including, but not limited to, all facilities and monies dedicated to public access use by the District and the cable television franchise agreement, shall be deemed assets held by the Corporation in trust for the benefit of the citizens of the District of Columbia for the purpose of developing and implementing the use and programming of those channels reserved on the cable system for public access.

(2) In the event of voluntary or involuntary dissolution of the Corporation all assets of the Corporation shall revert to the District.

(h) In addition to all other lawful grounds, the Corporation may be dissolved involuntarily by a decree of the court in an action instituted by the Mayor in the name of the District of Columbia when it is made to appear to the court that the Corporation has continued to exceed or abuse the powers or purposes set forth in its articles, has continued to exceed or abuse its bylaws, or has breached and continues to breach its fiduciary obligations to the citizens of the District of Columbia. Any involuntary dissolution shall be undertaken pursuant to the notice and remedy provisions of § 29-554. (Aug. 21, 1982, D.C. Law 4-142, § 30, 29 DCR 2872; renumbered and amended Oct. 22, 1983, D.C. Law 5-36, § 2(dd), 30 DCR 4289; Mar. 16, 1985, D.C. Law 5-195, § 2, 32 DCR 1022; Aug. 1, 1985, D.C. Law 6-15, § 2, 32 DCR 3570; Mar. 17, 1993, D.C. Law 9-213, § 2, 40 DCR 25.)

Cross references. — As to nonprofit corporations, see Chapter 5 of Title 29.

Section references. — This section is referred to in § 43-1802.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 5-195. — Law 5-195 was introduced in Council and assigned Bill No. 5-514, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Approved without the signature of the Mayor on January 11, 1985, it was assigned Act No. 5-262 and transmitted to both Houses of Congress for review.

Legislative history of Law 6-15. — Law 6-15 was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985 and

May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-213. — Law 9-213, the “Cable Television Communications Act of 1981 Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-479, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on November 4, 1992, and December 1, 1992, respectively. Signed by the Mayor on December 21, 1992, it was assigned Act No. 9-342 and transmitted to both Houses of Congress for its review. D.C. Law 9-213 became effective on March 17, 1993.

Legislative history of Law 10-253. — See note to § 43-1806.

References in text. — The phrase “the effective date of the act granting a cable television franchise,” in subsection (a), (b)(3)(A), (b)(3)(B), and (b)(4)(A), refers to the effective date of D.C. Law 5-163, December 28, 1984.

§ 43-1829.1. Public access.

(a) Requirements for equipment, facilities, studios and funding in support of public access shall be specified in a franchise agreement.

(b) The percent of total channel capacity to be set aside for public access purposes shall be established in the franchise agreement. The Board may assign the public access channels for a specified length of time. Public access channels shall be nonprofit channels on which specific persons, groups, organizations, and communities may have programming on a regular basis. At least 35% of the channel capacity designated for public access use shall be set aside for use by minorities as defined in this chapter. The adoption and implementation of the 35% set-aside shall not constitute a discriminatory practice prohibited under § 43-1840. The public access channels shall be coordinated and managed by the Public Access Board.

(c) A franchisee shall make equipment and assistance for the production of programming available to public access channel users at its studio. Additional equipment and production assistance shall be made available which will permit access users and a franchisee to produce programming at locations other than the studio in a manner set forth in the franchise agreement. For public access channel users, the franchisee shall provide use of the production facilities and production assistance at an amount set forth in the franchise agreement. The equipment made available under this subsection shall comply with the requirements set forth in the franchise agreement.

(d)(1) A cable operator shall comply with the leased access provisions under section 2 of the Communications Act of 1934, approved October 30, 1984 (98 Stat. 2782; 47 U.S.C. § 532), and with any leased access provisions in a franchise agreement, and shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the following requirements:

(A) An operator of any cable system with 36 but not more than 54 activated channels shall designate 10% of such channels which are not otherwise required for use, or whose use is not prohibited by federal law or regulation.

(B) An operator of any cable system with 55 but not more than 100 activated channels shall designate 15% of such channels which are not otherwise required for use, or whose use is not prohibited by federal law or regulation.

(C) An operator of any cable system with fewer than 36 activated channels shall not be required to designate channel capacity for commercial use by persons unaffiliated with the operator.

(2) At least $\frac{3}{5}$ of the leased channel capacity which must be designated under paragraph (1) of this subsection shall be reserved for District of Columbia-based organizations and businesses. Pursuant to section 2(i) of the Communications Act of 1934, approved October 30, 1984 (98 Stat. 2782; 47 U.S.C. § 532(i)), 33% of the leased channel capacity which must be designated under paragraph (1) of this subsection shall be reserved for lease to qualified minority programming sources as defined by federal law. The adoption and implementation of the 33% requirement shall not constitute a discriminatory practice under § 43-1840.

(3) The Office shall promulgate rules to carry out the purposes of this subsection. (Aug. 21, 1982, D.C. Law 4-142, § 30a, formerly § 30, 29 DCR)

2872; renumbered and amended Oct. 22, 1983, D.C. Law 5-36, § 2(dd), 30 DCR 4289; Nov. 15, 1983, D.C. Law 5-42, § 4(c), 30 DCR 4999; Apr. 9, 1997, D.C. Law 11-210, § 2(x), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 rewrote the section.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 5-42. — See note to § 43-1801.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1830. Operational requirements.

(a) A franchisee shall construct, operate, and maintain the cable television system subject to the supervision of the Office and in full compliance with the regulations, including applicable amendments, of the Federal Communications Commission and all other applicable federal or District laws and regulations, including the Electrical Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986, effective March 21, 1987 (D.C. Law 6-216; 12 DCMR article 18). The cable television system shall be subject to inspection by the Office.

(b) A franchisee shall maintain an office within the District of Columbia which shall be open and accessible to the public with adequate telephone service during all usual business hours, including facilities for 24-hour recording of subscriber complaints.

(c) A franchisee shall exercise its best efforts to design, construct, operate, and maintain the system at all times so that signals carried are delivered to subscribers without material degradation in quality.

(d) Copies of all correspondence, petitions, reports, applications, and other documents between the franchisee or franchisees and federal or District agencies having appropriate jurisdiction in matters affecting cable television operation shall be made available simultaneously by the franchisee or franchisees to the District.

(e) In the case of any emergency or disaster, the franchisee or franchisees shall, upon request of the Director, make available its facilities to the District for emergency use during the emergency or disaster. (Aug. 21, 1982, D.C. Law 4-142, § 31, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(ee), 30 DCR 4289; Mar. 21, 1987, D.C. Law 6-216, § 13(h), 34 DCR 1072; Apr. 9, 1997, D.C. Law 11-210, § 2(y), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 rewrote (a), (b), and (c).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 6-216. — Law 6-216 was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 18, 1986

and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-210. — See note to § 43-1802.

References in text. — The “Construction Codes Approval and Amendments Act of 1986,” referred to in the first sentence of subsection (a), is D.C. Law 6-216.

§ 43-1831. Performance monitoring.

Repealed. Apr. 9, 1997, D.C. Law 11-210, § 3(f), 43 DCR 4702.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1832. Maintenance service; complaint procedure; interruption of service; customer service standards.

A franchisee shall comply with all applicable federal customer service standards and with all customer service standards contained in a franchise agreement. The Office shall promulgate rules and standards to carry out the purposes of this section. (Aug. 21, 1982, D.C. Law 4-142, § 33, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(gg), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(z), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 rewrote the section.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1833. Installation of facilities.

(a) The franchisee or franchisees shall utilize existing poles, conduits, and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities until the written approval of the District is obtained. No location of any pole or wire-holding structure of a franchisee shall be a vested interest and poles or structures shall be removed or modified by the franchisee at its own expense whenever the District Department of Public Works determines that public convenience would be enhanced thereby.

(b) When the District, a franchisee, or public utility serving the District of Columbia desires to make use of poles, conduits, or other wire-holding structures, but agreement with the pole owner or right-of-way holder cannot be reached, the Commission may require the owner to permit use upon terms the Commission shall determine to be just and reasonable, if the Commission determines that the use would enhance the public convenience and would not unduly interfere with the operations of the owner.

(c) All transmission lines, equipment, and structures shall be so installed and located as to cause minimum interference with the rights, appearance, and reasonable convenience of property owners who adjoin on any street and at all times shall be kept and maintained in a safe, adequate, substantial condition, and in good order and repair. The franchisee or franchisees shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Any poles or other fixtures placed in any public way by the franchisee shall be placed in a manner as not to interfere with the usual travel on the public way.

(d) The franchisee or franchisees shall remove, replace, or modify the installation of any of its facilities as may be deemed necessary by the District to meet its proper responsibilities. Costs necessary to repair or refinish public ways defined in § 43-1802 (30) shall be borne by the franchisee or franchisees.

(e) Wherever any electrical and telephone utility wiring is located underground within conduits, either at the time of initial construction or subsequent thereto, and there is adequate capacity in the existing conduits for television cable, the cable shall be located underground within the existing conduits. If there is not adequate capacity in the existing underground conduits, the District Department of Transportation shall determine whether cable wiring should be located underground or overhead. Nothing in this section shall be construed to supersede any provision of existing laws or regulations with respect to prohibition of the installation of overhead wiring in certain areas of the District of Columbia.

(f) Excavation work performed by franchisee or franchisees in any public way shall be subject to all applicable laws, rules, and regulations of the District or any agency thereof. The franchisee shall, at its own expense and in a manner approved by the District, restore to District standards and specifications, on an interim basis, any damage or disturbance caused to the public way as a result of its operations or construction on its operations on its behalf, and shall guarantee the restoration until the time a permanent restoration is made. Permanent restoration shall be performed by the District Department of Transportation, and the costs associated therewith shall be billed to the franchisee or franchisees for the full width of the permanent improvement. The franchisee or franchisees shall place a deposit with the District Department of Transportation in an amount sufficient to cover the projected costs to be incurred by the District for the permanent restoration of any ongoing excavation.

(g) Whenever, in the case of fire or other disaster, it becomes necessary, in the judgment of the Office, the Fire Chief, or the Chief of the Metropolitan Police Department to remove or damage any of a franchisee's facilities, no charge shall be made by the franchisee or franchisees against the District for restoration and repair.

(h) At the request of any person holding a valid permit issued by the District to remove a building, and upon at least 48 hours notice, the franchisee or franchisees shall temporarily raise, lower, or cut its wires as may be necessary to facilitate the move. The direct expense of the temporary changes, including standby time, shall be paid by the permit holder, and the franchisee or franchisees shall have the authority to require payment in advance.

(i) A franchisee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the supervision and direction of the District. Trimming of trees on private property shall require written consent of the property owner.

(j) The franchisee shall not be required to obtain or pay for any permit in order to connect a drop line from trunk or feeder cable of the cable television residential or institutional network systems to the premises of a subscriber or in order to install, maintain, or repair cable television equipment and facilities

on the premises of a subscriber. (Aug. 21, 1982, D.C. Law 4-142, § 34, 29 DCR 2872; Sept. 17, 1982, D.C. Law 4-150, § 403, 29 DCR 3377; Oct. 22, 1983, D.C. Law 5-36, § 2(hh), 30 DCR 4289; Feb. 28, 1987, D.C. Law 6-206, § 2, 34 DCR 675; Apr. 9, 1997, D.C. Law 11-210), § 2(aa), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 substituted “Department of Public Works” for “Department of Transportation” in (a).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 4-150. — Law 4-150 was introduced in Council and assigned Bill No. 4-360, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 22, 1982 and July 6, 1982, respectively. Signed by the Mayor on July 21, 1982, it was assigned Act No. 4-221 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 6-206. — Law 6-206 was introduced in Council and assigned Bill No. 6-519, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second readings on November 18, 1986 and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-266 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1834. Construction and service schedules; maps.

(a) Upon accepting a franchise, a franchisee shall, within 90 days, file the documents required to obtain all necessary federal and District licenses, permits, and authorizations required for the conduct of its business, and shall submit monthly reports to the Office on its progress in this respect until all documents are obtained.

(b) Franchise agreements adopted by the Council shall incorporate construction and service schedules which shall set dates for the construction of the cable system, and maps of specific households and areas within the franchise territory. The schedules and maps shall be updated whenever substantial changes become necessary. Every 3 months after the start of construction, a franchisee shall furnish a report to the Office on the progress of construction until construction is completed. The report shall include a map that clearly defines the area wherein regular subscriber service is available.

(c) A franchisee shall complete construction of the cable system in the franchise territory and offer and deliver cable service in full accordance with this act and the franchise granted hereunder. The franchise agreement shall include a construction schedule by which a cable operator shall offer and deliver cable service within the franchise territory.

(d) The schedule for wiring the District of Columbia shall ensure that no substantial differences in the time by which service shall be available in a neighborhood will exist relative to the neighborhood’s relative median income levels or racial composition. (Aug. 21, 1982, D.C. Law 4-142, § 35, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(ii), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(bb), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 substituted “a franchisee” for “the franchisee or franchisees” in the third sentence in (b); and rewrote (c).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1835. Violations subject to penalties.

Repealed. Oct. 22, 1983, D.C. Law 5-36, § 3(8), 30 DCR 4289.

Legislative history of Law 5-36. — See note to § 43-1802.1.

§ 43-1836. Limits on franchisee's recourse.

(a) A franchisee shall have no recourse against the District for any loss, expense, or damage resulting from the terms and conditions of this chapter or the franchise agreement or because of the District's failure to have the authority to grant the franchise.

(b) A franchisee, by accepting a franchise, acknowledges that it has not been induced to accept the franchise by any promise, oral or written, by or on behalf of the District or by any third person regarding any term or condition of this chapter or the franchise agreement, not expressed therein. A franchisee further pledges that no promise or inducement, oral or written, has been made to any District employee or official regarding receipt of a franchise.

(c) A franchisee further acknowledges, by acceptance of a franchise, that the franchisee has carefully read the terms and conditions of this chapter and the franchise agreement and accepts without reservation the obligations imposed by the terms and conditions contained herein regardless of whether the obligations are contained in the franchise documents.

(d) A franchisee agrees, by the acceptance of a franchise, to accept the validity of the terms and conditions of this chapter and the franchise agreement in their entirety and that it will not, at any time, proceed against the District in any claim or proceeding challenging any terms or provisions of this chapter or the franchise agreement as unreasonable, arbitrary, void, or that the District did not have the authority to impose the term or condition. (Aug. 21, 1982, D.C. Law 4-142, § 37, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(jj), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(cc), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 rewrote (a).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1837. Compliance not excused by failure to enforce franchise.

The franchisee shall not be excused from complying with any of the terms and conditions of this chapter or the franchise agreement, as a result of any failure of the District, upon any one or more occasions, to insist upon the franchisee's performance or to seek the franchisee's compliance with any one or more of such terms or conditions. (Aug. 21, 1982, D.C. Law 4-142, § 38, 29 DCR 2872.)

Legislative history of Law 4-142. — See note to § 43-1801.

§ 43-1838. Effect of specific time for performance.

Whenever this chapter or the franchise agreement sets forth any time for any act to be performed by or on behalf of the franchisee, the time shall be deemed of the essence and the franchisee's failure to perform within the time allocated shall, in all cases, be sufficient grounds for the District to invoke the remedies available under the terms and conditions of this chapter and the franchise agreement. (Aug. 21, 1982, D.C. Law 4-142, § 39, 29 DCR 2872.)

Legislative history of Law 4-142. — See note to § 43-1801.

§ 43-1839. Rights reserved to District.

The District expressly reserves the following rights:

(1) To exercise its governmental powers, now or hereafter, to the full extent that the powers may be vested in or granted to the District.

(2) To adopt, in addition to the provisions contained herein and in the franchise agreement and in any existing applicable acts, additional regulations that it finds necessary in the exercise of its police power, if the regulations, by act or otherwise, shall be reasonable and not in conflict with the rights herein granted.

(3) The Council has the authority to revoke or terminate a franchise when it is determined by an appropriate government agency or judicial authority that sections of this chapter or franchise agreement are inconsistent with federal law or regulations. (Aug. 21, 1982, D.C. Law 4-142, § 40, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(kk), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(dd), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 inserted "terminate or" in (3).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1840. Franchisee not to discriminate.

A franchisee shall not refuse to hire or employ, discharge, or otherwise discriminate against any person for any reason provided in the Human Rights Act of 1977 (D.C. Code, § 1-2501 et seq.), and the provisions of that Act shall apply to the franchisee. (Aug. 21, 1982, D.C. Law 4-142, § 41, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(ll), 30 DCR 4289.)

Section references. — This section is referred to in §§ 1-2541, 43-1809, 43-1829.1 and 43-1841.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

§ 43-1841. Affirmative action requirements.

(a) In order to maximize opportunities for minority employment and participation in the cable system, an applicant shall submit at the time of submission

of its proposal a written affirmative action plan ("plan") for approval in accordance with § 1-2524, as amended by this act. The plan shall apply to all job categories with the franchisee's workforce.

(b) Each franchisee shall make a positive and good faith effort to establish employment goals and timetables designed to achieve minority representation equal to the minority population of the District of Columbia by the end of the 2nd year of the franchise and throughout the balance of the franchise term, provided qualified or qualifiable minority persons are available. The adoption and implementation of goals and timetables by a franchisee shall not constitute a discriminatory practice prohibited under § 43-1840.

(c) The Office shall give favorable consideration to franchise applicants whose plans include aggressive, innovative, and result-oriented policies and programs for the maximum utilization of minorities.

(d) Each franchise applicant's plan shall also include detailed on-the-job training and apprenticeship programs designed to provide District of Columbia residents, particularly unskilled and semi-skilled minority youth, with job skills, job opportunities, and upward mobility, both within the cable television industry and the franchise workforce. These programs shall be applicable to all job categories in the applicant's workforce and shall be maintained throughout the term of the franchise.

(e) Upon the grant of a franchise, the franchisee shall submit its construction and skilled trades apprenticeship training programs to the Director of the District of Columbia Apprenticeship Council for approval and registration pursuant to § 36-409.

(f) The franchisee or franchisees shall report annually to the Office of Human Rights regarding the status of its training programs including a detailed analysis of the franchisee's efforts to achieve its goals and timetables.

(g) Failure to comply with any provision of this section shall constitute an unlawful discriminatory practice and shall subject the franchisee to fines imposed by the Commission on Human Rights of not less than \$1,000 for each day that the violation persists and any other penalties that may be imposed pursuant to District law or this chapter. Where deemed appropriate, the Office of Human Rights may recommend to the Council suspension or termination of the franchise in accordance with procedures set forth in this chapter.

(h) For purposes of this section, the term "qualifiable" refers to minority persons who can be trained in accordance with the requirements of this section. (Aug. 21, 1982, D.C. Law 4-142, § 42(a)-(h), 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(mm), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(ee), 43 DCR 4702.)

Section references. — This section is referred to in § 1-2541.

Effect of amendments. — D.C. Law 11-210 substituted "Office" for "Design Commission" in (c).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

References in text. — This "act," referred to at the end of the first sentence in subsection (a), is D.C. Law 5-36.

§ 43-1842. Minority contracting requirements.

(a) A franchisee shall be treated as an agency for purposes of minority contracting. All provisions of subchapter II of Chapter 11 of Title 1 shall apply to the franchisee except the meaning of the term "minority" shall have the same meaning as in § 43-1802 (24) of this chapter.

(b) Where a minority business enterprise is otherwise qualified but cannot obtain necessary bonding or insurance the franchisee shall provide or obtain bonding or insurance, and transfer the cost to the minority business enterprise. (Aug. 21, 1982, D.C. Law 4-142, § 43, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(nn), 30 DCR 4289.)

Cross references. — As to minority contracting, see subchapter II of Chapter 11 of Title 1.

Section references. — This section is referred to in § 1-2541.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

§ 43-1843. Local hiring and subcontracting policy.

A franchisee's employee workforce and subcontractors shall consist of not less than 51% District of Columbia residents. (Aug. 21, 1982, D.C. Law 4-142, § 44, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(oo), 30 DCR 4289.)

Section references. — This section is referred to in § 1-2541.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

§ 43-1844. Restrictive easement; unlawful attachment for access or use.

(a) The District reserves the right to issue a license, easement, or other permit to anyone other than the franchisee to permit that person to traverse any portion of the franchisee's franchise area within the District of Columbia in order to provide adequate service. The license or easement, absent a grant or a franchise in accordance with this chapter, shall not authorize nor permit a person to provide a cable service of any nature to any home or place of business within the District of Columbia nor to render any service or connect any subscriber within the District of Columbia to the franchisee's CATV system.

(b) It shall be unlawful for any person to attach or affix, or cause to be attached or affixed, any equipment or device which allows access or use of a cable service without payment to the franchisee for same. (Aug. 21, 1982, D.C. Law 4-142, § 45, 29 DCR 2872; Mar. 14, 1985, D.C. Law 5-159, § 16(b), 32 DCR 30; Apr. 9, 1997, D.C. Law 11-210, § 2(ff), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 deleted "television" following "cable" in (a) and (b).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-159. — See note to § 43-1803.

Legislative history of Law 11-210. — See note to § 43-1802.

§ 43-1844.1. **Landlord-tenant relationship.**

(a) No landlord of a residential property shall:

(1) Interfere with the installation of cable television facilities upon his or her property or premises, except that a landlord may require:

(A) That the installation of cable television facilities conform to those reasonable conditions and architectural controls set forth by the landlord as being necessary to protect the safety, functioning, appearance of the premises, and the convenience and well-being of other tenants;

(B) That the cable television company or the tenant or a combination thereof bear the entire cost of the installation, operation, or removal of the facilities; and

(C) That the cable television company agrees to indemnify the landlord for any damages caused by the installation, operation or removal of the facilities.

(2) Demand or accept payment from any tenant, in any form, in exchange for permitting cable television service or facilities on or within his or her property or premises, or from any cable television company in excess of any amount allowed by the Office upon application by the landlord. The Office shall, by rule, provide procedures by which landlords may apply for and receive adequate compensation following notice provided in accordance with due process of law.

(3) Discriminate in rental charges or otherwise between tenants who receive cable television service and those who do not.

(b) Rental agreements and leases executed prior to October 22, 1983, may be enforced notwithstanding this section.

(c) No cable television company may enter into any agreement with the owners, lessees, or persons controlling or managing buildings served by cable television, or do or permit any act that would have the effect, directly or indirectly, of diminishing or interfering with existing rights of any tenant or other occupant of the building to use or avail himself or herself to master or individual antenna equipment.

(d) The Office shall issue rules to carry out the purposes of this section. (Aug. 21, 1982, D.C. Law 4-142, § 45a, as added Oct. 22, 1983, D.C. Law 5-36, § 2(pp), 30 DCR 4289.)

Section references. — This section is referred to in § 43-1849.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Short title. — The first section of D.C. Law

5-36 provided: "That this act may be cited as the 'Cable Television Communications Act of 1981 Clarification Amendment Act of 1983'."

Cited in District Cablevision Ltd. Partnership v. McLean Gardens Condominium Unit Owners' Ass'n, App. D.C., 621 A.2d 815 (1993).

§ 43-1845. **Protection of privacy.**

(a) The franchisee or franchisees shall not permit the transmission of any aural, visual, or digital signal, including "polling" the channel selection from any subscriber's premises without first obtaining written permission of the

subscriber. This provision is not intended to prohibit the use of transmission of signals useful only for the control or measurement of system performance.

(b) The franchisee or franchisees shall not permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from subscriber's premises of 2-way services utilizing aural, visual, or digital signals without first obtaining written permission from the subscriber.

(c) The franchisee or franchisees shall not provide to any person, except the subscriber as provided in subsection (d) of this section, any data in its possession with respect to an individual subscriber's financial transactions, viewing selections, and utilization of computer-based interactive services, or any other personal or private information. The franchisee or franchisees shall exercise the highest possible standard of care in protecting the privacy of this data.

(d) The franchisee or franchisees shall retain individual subscriber data described in subsection (c) of this section only for billing purposes and for no longer than 90 days.

(e) Any information obtained by a franchisee or franchisees about a subscriber shall be made available to the subscriber within 10 days after receipt of a request from the subscriber to examine the information.

(f) Upon a subscriber's application for cable television service, including, but not limited to, interactive service, a cable television corporation shall provide the applicant with a separate notice explaining the subscribers's right to privacy protection afforded by this section.

(g) Any person or corporation which violates this section shall be imprisoned for not more than 6 months, or shall be fined not more than \$10,000, or both. Nothing in this subsection shall preclude the right of subscribers to pursue alternative civil remedies for the invasion of the right of privacy. Any violation of this section by a franchisee also shall be deemed to be a material breach of the franchise agreement which shall constitute grounds for termination of the franchise.

(h) This section shall be administered in accordance with, and a franchisee shall comply with, section 2 of the Communications Act of 1934, approved October 30, 1934 (48 Stat. 2794; 47 U.S.C. § 551). (Aug. 21, 1982, D.C. Law 4-142, § 46, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(qq), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(gg), 43 DCR 4702.)

Effect of amendments. — D.C. Law 11-210 deleted the former last sentence in (c); and added (h).

Temporary amendment of section. — Section 8 of D.C. Law 12-(Act 12-279) amended subsection (c) so as to read as follows:

"(c) The franchisee or franchisees shall not provide to any person, except the subscriber as provided in subsection (d) of this section, and the organizational unit in the District that is responsible for administering or supervising the administration of the District's State Plan under title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42

U.S.C. § 651 et seq.) ("IV-D agency"), any data in its possession with respect to an individual subscriber's financial transactions, viewing selections, and utilization of computer-based interactive services, or any other personal or private information. The franchisee or franchisees shall exercise the highest possible standard of care in protecting the privacy of this data, except by the IV-D agency."

Section 16(b) of D.C. Law 12-(Act 12-279) provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of § 43-1845, see § 8 of the

Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

Legislative history of Law 12- (Act 12-279). — Law 12- (Act 12-279), the “Child Sup-

port and Welfare Reform Compliance Temporary Amendment Act of 1998,” was retained by Council and assigned Bill No. 12-365, which was referred to the _____. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 30, 1998, it was assigned Act No. 12-279 and transmitted to both Houses of Congress for its review. D.C. Law 12- (Act 12-279) became effective on _____.

§ 43-1846. Costs.

A franchisee shall assume all franchising costs, which are payable upon the franchisee’s filing of acceptance as described herein and above. (Aug. 21, 1982, D.C. Law 4-142, § 47, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(rr), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(hh), 43 DCR 4702; Apr. 9, 1997, D.C. Law 11-255, § 46(b), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-210 rewrote the section.

D.C. Law 11-255 validated a previously made stylistic correction.

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

Legislative history of Law 11-255. — Law

11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 43-1847. Obscenity laws.

(a) Section 22-2001 shall apply to cable television programming.

(b) The franchisee or franchisees and all users of the cable television system shall comply with all federal laws regarding obscenity on cable television and all District laws regarding obscenity. (Aug. 21, 1982, D.C. Law 4-142, § 48, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(ss), 30 DCR 4289.)

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

§ 43-1848. “Rent-a-citizen” practice discouraged.

The cable industry practice of enlisting local supporters by providing gifts of equity or other financial inducements, commonly called “rent-a-citizen”, whether carried out by individuals, groups or institutions, is specifically discouraged. Engaging in the practice of “rent-a-citizen” by an applicant for the franchise will be considered grounds for disqualifying the applicant’s proposal. (Aug. 21, 1982, D.C. Law 4-142, § 49, 29 DCR 2872.)

Legislative history of Law 4-142. — See note to § 43-1801.

§ 43-1848.1. Obtaining services without compensation unlawful.

(a) It shall be a violation of this chapter for any individual to knowingly obtain or to attempt to obtain, or to knowingly assist or to instruct any individual in obtaining or attempting to obtain, any cable television service without compensation to the franchisee providing the cable television service.

(b) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this section. (Aug. 21, 1982, D.C. Law 4-142, § 49A, as added Mar. 16, 1988, D.C. Law 7-93, § 3(b), 35 DCR 721.)

Legislative history of Law 7-93. — Law 7-93 was introduced in Council and assigned Bill No. 7-324, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 8, 1987 and January 5, 1988, respectively. Signed by the Mayor on January 25, 1988, it was assigned Act No. 7-135 and transmitted to both Houses of Congress for its review.

Short title. — The first section of D.C. Law 7-93 provided: "That this act may be cited as the 'Cable Television Communications Act of 1981 Amendment Act of 1987'."

Delegation of authority pursuant to D.C. Law 7-93, the Cable Television Communications Act of 1981 Amendment Act of 1987. — See Mayor's Order 90-137, October 17, 1990.

§ 43-1849. Civil penalties; prosecutions.

(a) Any individual who violates any provision of this chapter shall be fined a civil penalty not to exceed \$10,000 per infraction.

(b) Any person who knowingly files any false or misleading statement, report, voucher, or other paper, or makes any false or misleading statement concerning disclosure of information required under this chapter, shall be fined a civil penalty not to exceed \$25,000.

(c) Prosecution of violations of this chapter shall be brought by the Corporation Counsel of the District of Columbia in the name of the District of Columbia.

(d) Civil fines, penalties, and fees may be imposed as alternative sanctions for violations of § 43-1844.1, or any rules or regulations promulgated under this chapter.

(e) The Office shall issue rules and regulations to carry out the purposes of this section. (Aug. 21, 1982, D.C. Law 4-142, § 51, 29 DCR 2872; Oct. 22, 1983, D.C. Law 5-36, § 2(tt), 30 DCR 4289; Apr. 9, 1997, D.C. Law 11-210, § 2(ii), 43 DCR 4702.)

Cross references. — As to conduct of prosecutions, see § 23-101.

Section references. — This section is referred to in § 43-1807.1.

Effect of amendments. — D.C. Law 11-210 added (d) and (e).

Legislative history of Law 4-142. — See note to § 43-1801.

Legislative history of Law 5-36. — See note to § 43-1802.1.

Legislative history of Law 11-210. — See note to § 43-1802.

Cited in District of Columbia v. AMSAT, 118 WLR 2257 (Super. Ct. 1990).

CHAPTER 19. PUBLIC UTILITY ENVIRONMENTAL IMPACT
STATEMENT REQUIREMENTS.

Sec.
43-1901. Purpose.
43-1902. Definitions.
43-1903. Environmental impact statement re-
quirements.

Sec.
43-1904. Rules.

§ 43-1901. Purpose.

The purpose of this chapter is to protect and enhance the public health, welfare and safety of the citizens of the District of Columbia ("District") and provide for the fullest possible preservation and protection of the environment. If a public utility proposes an action, it shall prepare and transmit a detailed environmental impact statement to the Public Service Commission ("Commission"). If the Commission determines that an unacceptable risk of adverse health effects exists because of an action that is proposed by a public utility, a public utility doing business in the District of Columbia shall not construct a facility or undertake a project without a detailed and comprehensive analysis and understanding of the impact that the project or the construction or operation of the facility may have on the public health, safety, and environment. These goals require that a public utility prepare and file an environmental impact statement that complies fully with the requirements of this chapter, before application is made to the Department of Consumer and Regulatory Affairs for a permit, and subchapter VI of Chapter 9 of Title 6. (Oct. 19, 1989, D.C. Law 8-45, § 2, 36 DCR 5779.)

Legislative history of Law 8-45. — Law 8-45, "District of Columbia Public Utility Environmental Impact Statement Requirement Act of 1989," was introduced in Council and assigned Bill No. 8-208, which was referred to the Committee on Public Services. The Bill was

adopted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-78 and transmitted to both Houses of Congress for its review.

§ 43-1902. Definitions.

For the purposes of this chapter, the term:

(1) "Action" means any project or activity proposed by a public utility that, if implemented, would be likely to have a significant effect on the quality of the environment. The term "action" shall include a new and continuing project or activity that is directly undertaken by a public utility or its agent or subsidiary, that would require the issuance of a lease, permit, license, certificate, or other entitlement for use or permission to act by the Commission. The term "action" shall not include:

- (A) A project or activity of an administrative nature that does not involve an exercise of discretion;
- (B) An enforcement proceeding;
- (C) An emergency action that responds to an immediate threat to public health or safety;

(D) Maintenance or repair that does not involve a substantial change in an existing structure or facility;

(E) A normal extension of electric utility service;

(F) The extension or replacement of a gas distribution facility;

(G) The extension or replacement of a telephone line as defined in § 43-218; and

(H) The installation, repair, or replacement of equipment or a device identified in § 43-214, with the exception of an electric generating facility or overhead transmission line of 69,000 volts and over.

(2) "Environment" means the physical conditions that will be affected by a proposed action, including the land, air, water, minerals, flora, fauna, objects of historic, health, or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood characteristics, including traffic patterns and noise levels. (Oct. 19, 1989, D.C. Law 8-45, § 3, 36 DCR 5779; May 21, 1994, D.C. Law 10-121, § 2, 41 DCR 1653.)

Legislative history of Law 8-45. — See note to § 43-1901.

Legislative history of Law 10-23. — Law 10-23, the "Public Utility Environmental Impact Statement Electrical Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-291. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 19, 1993, it was assigned Act No. 10-55 and transmitted to both Houses of Congress for its review. D.C. Law 10-23 became effective on September 30, 1993.

Legislative history of Law 10-121. — Law 10-121, the "Public Utility Environmental Impact Statement Electrical Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 21, 1994, it was assigned Act No. 10-212 and transmitted to both Houses of Congress for its review. D.C. Law 10-121 became effective on May 21, 1994.

§ 43-1903. Environmental impact statement requirements.

(a) If a public utility proposes an action, it shall prepare and transmit to the Commission a detailed environmental impact statement within 60 days following the submission of the proposal. The environmental impact statement shall describe in detail the proposed action, the necessity for the proposed action, and a brief discussion of the following factors:

(1) The nature of the proposed action and the environment that the proposed action would affect;

(2) The need for the proposed action;

(3) The reasons for the selection of the site for a proposed action, if any;

(4) The long and short-term impact of the proposed action on the environment;

(5) Any adverse environmental effect that cannot be avoided if the proposed action is implemented;

(6) Measures proposed to minimize any adverse environmental effect;

(7) Any commitment of resources involved in the proposed action;

(8) The impact of the proposed action on the use and conservation of energy resources, if applicable and significant; and

(9) Any additional information that the Commission determines to be helpful in determining the environmental impact of the proposed action.

(b) The environmental impact statement shall be considered in addition to any Department of Consumer and Regulatory Affairs' decision regarding the environmental impact of the action.

(c) For any proposed action that is subject to this chapter, including but not limited to new plant construction or the expansion of an existing plant, the public utility shall perform an analysis that identifies the cumulative risk of adverse health effects from any existing and projected emissions of pollutants from the proposed action. If the Commission determines, on the basis of the analysis and any other information submitted at any public hearing on the pending application, that the addition of the new facility may create an unacceptable risk of adverse health effects, the Commission shall require the public utility to submit the following information:

(1) An analysis and determination of the current, baseline, ambient air quality within a ½ mile radius of the proposed action that identifies the concentrations of all potentially toxic air and water pollutants emitted by the existing facility and the proposed action;

(2) An analysis of the current, baseline, health status of the population found by the Commission to be most directly affected by the construction or operation of the proposed action; and

(3) An analysis of the impact of the construction and operation of the proposed action on human health or the environment in light of the results of the analyses conducted under paragraphs (1) and (2) of this subsection.

(d) For a proposed action that is the subject of an application pending on October 19, 1989, the public utility shall prepare and submit an environmental impact statement within 30 days of October 19, 1989. To the maximum extent practicable, the statement shall rely on environmental information available on October 19, 1989. The Commission may require the public utility to submit any additional information that, in the Commission's judgment, is needed to satisfy the requirements set forth in subsection (a) of this section or to enable the Commission to make its decision concerning the reasonable safety and adequacy of the proposed facility. (Oct. 19, 1989, D.C. Law 8-45, § 4, 36 DCR 5779.)

Legislative history of Law 8-45. — See note to § 43-1901.

§ 43-1904. Rules.

The Commission shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this chapter. (Oct. 19, 1989, D.C. Law 8-45, § 5, 36 DCR 5779.)

Legislative history of Law 8-45. — See note to § 43-1901.

CHAPTER 20. COGENERATION FACILITIES APPROPRIATENESS STANDARDS.

Sec.

43-2001. Findings.

43-2002. Prohibition on the issuing of permits.

43-2003. Establishment of time frame for action.

Sec.

43-2004. Enactment by the Council of the District of Columbia.

§ 43-2001. Findings.

The Council of the District of Columbia finds that:

(1) The District of Columbia lacks an overall policy on emerging technologies in the areas of energy and environmental protection and the impact those technologies may have on the quality of life in the District of Columbia, and is dependent on requirements in District of Columbia law to protect its citizens from potentially adverse effects of those technologies.

(2) Cogeneration can be an energy saving and cost efficient alternative to the building of additional electric utility plants.

(3) Cogeneration plants may have negative environmental impacts occasioned by the size of the plant, its proximity to residential areas or fragile ecosystems, the kind of fuel used to power the cogeneration plant and the technology and logistics of supplying that fuel, and any transfer of the power generated by the cogenerator to a receiver at a site other than that on which the cogenerator is housed.

(4) Cogenerators may be sources of electromagnetic field ("EMF") radiation, and studies undertaken within the past decade indicate a strong potential for a substantive correlation between high amounts of electromagnetic field radiation and an increased risk of cancer in persons, particularly children, who are exposed to EMF emissions.

(5) The Public Service Commission has identified 21 sites in the District, in addition to the Georgetown University site, where there is an immediate potential for a cogenerator; these sites are:

Ward 1 Howard University

Ward 2 George Washington University
GSA Central Heating Plant
GSA West Heating Plant

Ward 3 University of the District of Columbia
American University
Sibley Memorial Hospital

Ward 4	Washington Hospital Center Walter Reed Army Medical Center U.S. Soldiers' and Airmen's Home
Ward 5	Gallaudet University Catholic University of America U.S. Postal Service (Brentwood Road)
Ward 6	D.C. General Hospital U.S. Capitol Power Plant Washington Navy Yard
Ward 7	None
Ward 8	Saint Elizabeth's Hospital Naval Research Laboratory Anacostia Naval Annex Bolling Air Force Base D.C. Village

(6) Cogenerators may be proposed as sources of power for an on-site receiver or an off-site receiver; and cogenerators may be proposed to be constructed with a capacity to produce power in excess of the needs of an on-site host facility.

(7) The technology exists to transform and transfer electrical power produced by a cogeneration plant directly into an on-site receiving facility without first transmitting that electricity into an off-site power grid.

(8) There exists no impediment in current District of Columbia law to the ownership by foreign utility companies of cogenerators located in the District of Columbia.

(9) Pursuant to District of Columbia law, no gas corporation or electrical corporation shall begin the construction of a gas plant or electric plant without first having obtained the permission and approval of the Public Service Commission of the District of Columbia.

(10) District of Columbia law mandates that if a public utility proposes an action, it shall prepare and submit a detailed environmental impact statement to the Public Service Commission, and that such a statement must be prepared and filed before application is made to the Department of Consumer and Regulatory Affairs for a permit.

(11) The Office of Peoples' Counsel is statutorily established, empowered, and required to be a party in any investigation, valuation, revaluation, or

proceeding of any nature by the Public Service Commission of or concerning any public utility operating in the District of Columbia.

(12) The Public Service Commission and the Office of Peoples' Counsel have the experience and staff capability to establish and monitor the appropriateness of any proposed cogeneration facility in the District of Columbia. (May 21, 1994, D.C. Law 10-120, § 2, 41 DCR 1648.)

Legislative history of Law 10-120. — Law 10-120, the "Cogeneration Facilities Appropriateness Standards Act of 1994," was introduced in Council and assigned Bill No. 10-447, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted

on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 17, 1994, it was assigned Act No. 10-210 and transmitted to both Houses of Congress for its review. D.C. Law 10-120 became effective on May 21, 1994.

§ 43-2002. Prohibition on the issuing of permits.

(a) No agency of the District of Columbia government shall issue any permit for the construction, expansion, or operation of any cogeneration facility in the District of Columbia until the Public Service Commission of the District of Columbia has established appropriateness standards for cogenerators within the District of Columbia. The appropriateness standards shall include consideration of:

(1) The location of the site of a cogeneration plant in relation to residential areas of varying density, to recreational areas, and to areas of fragile ecosystems;

(2) The size of the lot on which the cogenerator is to be located;

(3) The level of noise, electromagnetic radiation, and other types of emissions and environmental pollutants expected to be occasioned by the cogenerator in relation to the communities in and adjacent to the site of that cogeneration facility;

(4) The impact of the cogenerator on the property values of the owners of properties adjacent and surrounding the cogenerator site;

(5) The placement and environmental impact of equipment and auxiliary facilities, such as fuel storage tanks or containers, pipelines, or switchyards, in relation to communities and property adjacent to and surrounding the cogenerator site;

(6) The circumstances under which foreign utility companies will be allowed to own or operate cogeneration plants in the District of Columbia;

(7) The circumstances under which an entity or entities other than the owners of the host property may own or operate a cogeneration plant in the District of Columbia; and

(8) Any other criteria which will serve to ensure the protection of residential neighborhoods and the health and safety of the citizens of the District of Columbia.

(b)(1) Notwithstanding the criteria outlined in subsection (a) of this section, no permit shall be issued for any cogeneration plant unless the host facility will use directly, as an annual average, no less than 70% of the total output (such as heat and electrical energy) produced by the cogenerator at the time it becomes operable and at all times thereafter.

(2) In the event that the host facility cannot use directly an annual average of 70% of the total output of the cogeneration plant owing to conditions beyond its control, the host facility may petition the Public Service Commission for a reduction of the 70% requirement. If the Public Service Commission finds that the petition presents valid reasons, it may grant such a reduction in the 70% requirement that it determines is warranted by the facts.

(c) In addition to the establishment of appropriateness standards for cogeneration plants in the District of Columbia, and prior to any agency of the District of Columbia government issuing any permits for the construction, expansion, or operation of any cogeneration facility in the District of Columbia, the Public Service Commission shall also establish the procedure through which entities, including both utility and nonutility generators, proposing to construct, expand, or operate a cogeneration facility in the District of Columbia shall come before the Public Service Commission and demonstrate to the approval of the Commission that the proposed cogeneration plant is a facility which meets the appropriateness standards established by the Commission. (May 21, 1994, D.C. Law 10-120, § 3, 41 DCR 1648.)

Legislative history of Law 10-120. — See note to § 43-2001.

§ 43-2003. Establishment of time frame for action.

Within 120 days of May 21, 1994, the Public Service Commission shall submit to the Council of the District of Columbia the standards and procedures required by § 43-2002. (May 21, 1994, D.C. Law 10-120, § 4, 41 DCR 1648.)

Legislative history of Law 10-120. — See note to § 43-2001.

§ 43-2004. Enactment by the Council of the District of Columbia.

The appropriateness standards and the procedures for approval required to be established by the Public Service Commission in § 43-2002 shall be submitted to the Council of the District of Columbia for its approval by act, and no agency of District government may issue any permit for the construction, expansion, or operation of any cogeneration facility until the Council acts pursuant to this chapter. (May 21, 1994, D.C. Law 10-120, § 5, 41 DCR 1648.)

Legislative history of Law 10-120. — See note to § 43-2001.

TITLE 44. RAILROADS AND OTHER CARRIERS.

Chapter

- 1. Railroads..... §§ 44-101 to 44-107.
- 2. Street Railways and Bus Lines..... §§ 44-201 to 44-226.
- 3. Passenger Motor Vehicles for Hire..... [Repealed].
- 4. Employers' Liability..... §§ 44-401 to 44-405.

CHAPTER 1. RAILROADS.

Sec.	Sec.
44-101. Disposition of property — Sale of unclaimed freight and baggage.	44-105. Waiting room on platform authorized.
44-102. Same — Where impractical to give notice or delay sale; sale authorized by court order.	44-106. Reversion of property to District of Columbia; adequate walkways provided.
44-103. Disposition of proceeds of sale.	44-107. Right to alter, amend, or repeal reserved.
44-104. Abandonment of railroad substation authorized.	

§ 44-101. Disposition of property — Sale of unclaimed freight and baggage.

Whenever any freight, baggage, or other property transported by a common carrier to, or deposited with a common carrier at, any point in the District of Columbia, shall remain unclaimed by the owner or consignee, or the charges thereon shall remain unpaid for the space of 6 months after arrival at the point to which the same shall have been directed or transported, or after deposit as aforesaid, and the owner or person to whom the same is consigned, or by whom the same shall have been deposited, shall, after notice of such arrival, or after notice to take away such property so deposited, neglect or refuse to receive the same and pay the charges thereon within such period of 6 months, then it shall be lawful for such carrier to sell such freight, baggage, or other property at public auction, after giving 3 weeks notice of the time and place of sale, once a week for 3 successive weeks, in a newspaper published in the District of Columbia. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 642; 1973 Ed., § 44-101.)

Section references. — This section is referred to in §§ 29-101, 29-209, 29-211, 29-215, 29-223, 29-229, 29-233, 29-234, 29-236, 29-238 to 29-240, 44-102 and 44-103.

§ 44-102. Same — Where impractical to give notice or delay sale; sale authorized by court order.

Upon the application of such carrier, verified by affidavit, to the Superior Court of the District of Columbia, setting forth that the place of residence of the owner or consignee of any such freight, baggage, or other property is unknown, or that such freight, baggage, or other property is of such perishable nature, or so damaged, or showing any other cause that shall render it impracticable to give the notice or delay the sale for the period provided in § 44-101, then it shall be lawful for such Court to make an order authorizing

the sale of such freight, baggage, or other property upon such terms as to notice as the nature of the case may admit of and to such Court shall seem meet. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 643; June 30, 1902, 32 Stat. 534, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 575, Pub. L. 91-358, title I, § 157(j); 1973 Ed., § 44-102.)

Section references. — This section is referred to in §§ 29-101, 29-209, 29-211, 29-215, 29-223, 29-229, 29-233, 29-234, 29-236, 29-238 to 29-240 and 44-103.

§ 44-103. Disposition of proceeds of sale.

The residue of moneys arising from any such sale, under either § 44-101 or § 44-102, after deducting the amount of charges, including charges for transportation, the cost of handling and storage, demurrage, and the costs and expenses of proceedings to authorize the sale, and of advertising and sale, shall be paid to the owner of such freight, baggage, or other property on demand. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 644; 1973 Ed., § 44-103.)

Section references. — This section is referred to in §§ 29-101, 29-209, 29-211, 29-215, 29-223, 29-229, 29-233, 29-234, 29-236, and 29-238 to 29-240.

§ 44-104. Abandonment of railroad substation authorized.

Upon the completion by it of the substitute facilities authorized by § 44-105 hereof, the Philadelphia, Baltimore and Washington Railroad Company is authorized, without any further or other authority, to abandon and remove the 7th Street substation built and maintained by it pursuant to the requirements of Act of February 3, 1909 (35 Stat. 593, ch. 63), and to abandon the ticket agency and baggage accommodations maintained by it pursuant to the requirements of said Act. (July 25, 1935, 49 Stat. 497, ch. 415, § 1; 1973 Ed., § 44-104.)

Section references. — This section is referred to in § 44-107.

§ 44-105. Waiting room on platform authorized.

In lieu of the said substation and facilities maintained at the intersection of 7th Street and C Street Southwest, in the City of Washington, the Philadelphia, Baltimore and Washington Railroad Company is authorized to construct and maintain on the train platform an enclosed waiting room for passengers, with convenient means of ingress and egress leading from and to the street level below. (July 25, 1935, 49 Stat. 498, ch. 415, § 2; 1973 Ed., § 44-105.)

Section references. — This section is referred to in §§ 44-104 and 44-107.

§ 44-106. Reversion of property to District of Columbia; adequate walkways provided.

The area in square south of 463 on the map of the City of Washington heretofore used for station purposes shall revert to the District of Columbia upon the completion of these improvements: Provided, that the said Philadelphia, Baltimore and Washington Railroad Company shall construct and maintain thereon, subject to the approval of the Mayor of the District of Columbia, adequate walkways to the adjacent streets. (July 25, 1935, 49 Stat. 498, ch. 415, § 3; 1973 Ed., § 44-106.)

Section references. — This section is referred to in § 44-107.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 44-107. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal §§ 44-104 to 44-106. (July 25, 1935, 49 Stat. 498, ch. 415, § 4; 1973 Ed., § 44-107.)

CHAPTER 2. STREET RAILWAYS AND BUS LINES.

Sec.	Sec.
44-201. Competitive lines on fixed routes and schedules; certificate of convenience and necessity required.	44-215. [Repealed].
44-202. Furnishing sufficient cars, power, equipment, appliances and service required; rules and regulations; penalties for violation.	44-216. Same — Subsidy agreement.
44-203. Prosecutions to be on information.	44-217. Same — Validity of reduced fares; requirements for eligibility.
44-204. Fenders required on street cars.	44-218. Same — Tokens and tickets; certification of eligibility required.
44-205. Glass vestibules required for street car motormen; penalties; exception.	44-219. Same — Metrorail discount cards; factors determining need in use of transit system.
44-206. Construction of duct lines authorized.	44-220. Same — Subsidy payments authorized; audit; interest credit for advance payment.
44-207. Unlawful disposition, acceptance and use of transfers.	44-221. Same — Rules and regulations.
44-208. Reciprocal transfer and trackage agreements.	44-222. Annual reports to Congress.
44-209. Type of rails required.	44-223. Unlawful conduct on public passenger vehicles.
44-210. Use of another's underground line prohibited.	44-223.1. Public transit vehicle safety; findings.
44-211. Removal of disused tracks; penalty for noncompliance.	44-224. Failure to pay established fare or to present valid transfer; entry by rear exit door prohibited.
44-212. Free transfer under reciprocal trackage agreement.	44-225. Carrier authorized to refuse transportation to violators.
44-213. [Repealed].	44-226. Penalties.
44-214. Reduced fares for school children.	

§ 44-201. Competitive lines on fixed routes and schedules; certificate of convenience and necessity required.

No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established without the prior issuance of a certificate by the Public Service Commission of the District of Columbia to the effect that the competitive line is necessary for the convenience of the public. (Jan. 14, 1933, 47 Stat. 760, ch. 10, § 4; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; 1973 Ed., § 44-201.)

Cross references. — As to powers of Public Service Commission, see § 43-403.

As to merger of street railroads, see § 43-801 et seq.

Section covers all kinds of operations of a competitive bus line, regardless of whether they are intrastate or interstate, and is not limited to interstate operations. *Oriole Motor Coach Co. v. Public Utils. Comm'n*, 111 F. Supp. 621 (D.D.C. 1953).

Protectable status. — This section gives a transit company a status which is legally protectable. *Capital Transit Co. v. Safeway Trails, Inc.*, 201 F.2d 708 (D.C. Cir. 1953).

Commission not entitled to injunction.

— Unless there is a legal basis, the Public Service Commission is not entitled to an injunction which would restrain a utility from retiring bonds and from paying dividend, pending the Commission's investigation of the utility's financial structure. *Public Utils. Comm'n v. Capital Transit Co.*, 214 F.2d 242 (D.C. Cir. 1954).

Cited in *Washington, Marlboro & Annapolis Motor Lines v. Public Utils. Comm'n*, 114 F. Supp. 321 (D.D.C. 1950), aff'd, 206 F.2d 490 (D.C. Cir. 1953).

§ 44-202. Furnishing sufficient cars, power, equipment, appliances and service required; rules and regulations; penalties for violation.

Every street railroad company or corporation owning, controlling, leasing or operating one or more street railroads within the District of Columbia shall on each and all of its railroads supply and operate a sufficient number of cars, clean, sanitary, in good repair, with proper and safe power, equipment, appliances and service, comfortable and convenient, and so operate the same as to give expeditious passage, not to exceed 15 miles per hour within the city limits or 20 miles per hour in the suburbs, to all persons desirous of the use of the said cars, without crowding said cars. The Public Service Commission is hereby given power to require and compel obedience to all of the provisions of this section, and to make, alter, amend and enforce all needful rules and regulations to secure said obedience; and said Commission is given power to make all such orders and regulations necessary to the exercise of the powers herein granted to it as may be reasonable and proper; and such railroad companies or corporations, their officers and employees, are hereby required to obey all the provisions of this section, and such regulations and orders as may be made by said Commission. Any such company or corporation, or its officers or employees, violating any provision of this section, or any of the said orders or regulations made by said Commission, or permitting such violation, shall be punished by a fine of not more than \$1,000. And each day of failure or neglect on the part of such company or corporation, its officers or employees, to obey each and all of the provisions and requirements of this section, or the orders and regulations of the Commission made thereunder, shall be regarded as a separate offense. (May 23, 1908, 35 Stat. 250, ch. 190, § 16; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; 1973 Ed., § 44-202.)

Cross references. — As to care, maintenance, and repair of street cars, see § 43-410.

As to merger of street railway corporations operating in the District, see §§ 43-801 to 43-803.

As to prosecutions, see § 44-203.

Section references. — This section is referred to in § 44-203.

This section and § 44-205 are capable of concurrent enforcement. *Washington Ry. & Elec. Co. v. District of Columbia*, 10 F.2d 999 (D.C. Cir. 1926).

Prosecutions under this section are to be conducted by the Corporation Counsel of the District of Columbia. *United States v. Capital Traction Co.*, 38 App. D.C. 469 (1912).

§ 44-203. Prosecutions to be on information.

Prosecutions for violations of any of the provisions of §§ 44-202, 44-206, and 44-207 shall be on information of the Public Service Commission filed in the Superior Court of the District of Columbia by or on behalf of the Commission. (May 23, 1908, 35 Stat. 250, ch. 190, § 17; Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 44-203.)

Cross references. — As to criminal offenses, see § 43-301 et seq.

This section does not repeal § 44-205 but both are capable of concurrent enforcement.

Washington Ry. & Elec. Co. v. District of Columbia, 10 F.2d 999 (D.C. Cir. 1926).

Prosecutions are to be conducted by the

Corporation Counsel of the District of Columbia. United States v. Capital Traction Co., 38 App. D.C. 469 (1912).

§ 44-204. Fenders required on street cars.

The Mayor of the District of Columbia is hereby authorized and empowered to make and to enforce all reasonable regulations in respect to requiring street cars operated by other means than horsepower in the District of Columbia to be provided with proper fenders for the protection of the lives and limbs of all persons within the District of Columbia. Such power and authority shall extend to the adoption by the said Mayor of any fender or fenders deemed by him to be superior to the fenders now in use as the fender or fenders which shall be used on cars operated within said District; provided, that nothing contained in this section shall operate to relieve any street-railway company from liability for accidents on its lines. (Aug. 7, 1894, 28 Stat. 250, ch. 232; 1973 Ed., § 44-204.)

Cross references. — As to care, maintenance, and repair of street cars, see § 43-410.

As to rules and regulations, see § 44-202.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 44-205. Glass vestibules required for street car motormen; penalties; exception.

Every person or corporation operating street cars in the District of Columbia shall provide each of the same with a glass vestibule, surrounding, as nearly as possible, the place where the motorman, operating said car stands, so that said motorman shall be protected from inclement weather. Every person or corporation who or which shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$100 nor more than \$500 for each and every day any street car is operated not provided with the vestibule required by this section; provided, however, that the requirements of this section shall not apply to cars operated from the first day of April to the first day of November of each and every year. (Mar. 3, 1905, 33 Stat. 1001, ch. 1434; 1973 Ed., § 44-205.)

Cross references. — As to care, maintenance, and repair of street cars, see § 43-410.

This section is not void for indefiniteness. Washington Ry. & Elec. Co. v. District of

Columbia, 10 F.2d 999 (D.C. Cir. 1926).

And it was not impliedly repealed by § 44-202 or §§ 43-207 and 43-208. *Washington Ry. & Elec. Co. v. District of Columbia*, 10 F.2d 999 (D.C. Cir. 1926).

Vestibule open on each side of platform does not comply with this section. *Washington Ry. & Elec. Co. v. District of Columbia*, 10 F.2d 999 (D.C. Cir. 1926).

§ 44-206. Construction of duct lines authorized.

The Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway Company, and the Capital Traction Company are hereby permitted to lay duct lines on such streets as may be necessary for the proper operation of their lines, the location of such duct lines to be approved by the Mayor of the District of Columbia, and the cost thereof shall be borne and paid solely by said street-railway companies, and they shall be solely liable for all damages to persons and property occasioned by any construction or work authorized by this section. (May 23, 1908, 35 Stat. 247, ch. 190, § 4; 1973 Ed., § 44-206.)

Cross references. — As to easement to Washington Railway and Electric Company over Michigan Avenue, see § 7-131.

As to merger of street railway corporations operating in the District, see §§ 43-801 to 43-803.

As to prosecutions, see § 44-203.

Section references. — This section is referred to in § 44-203.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 44-207. Unlawful disposition, acceptance and use of transfers.

No transfer ticket or written or printed instrument giving or purporting to give the right of transfer to any person or persons from a public conveyance operated upon one line or route of a street railroad or from one car to another car upon the line of any street railroad, shall be issued, sold, or given except to a passenger lawfully entitled thereto. Any person who shall issue, sell, or give away such a transfer ticket or instrument as aforesaid to a person or persons not lawfully entitled thereto, and any person or persons not lawfully entitled thereto who shall receive and use or offer for passage any such transfer ticket or instrument to another with intent to have such transfer ticket used or offered for passage shall be punished by a fine not exceeding \$25. (May 23, 1908, 35 Stat. 250, ch. 190, § 15; 1973 Ed., § 44-207.)

Cross references. — As to rates and rate making, see § 43-601.

As to prosecutions, see § 44-203.

Section references. — This section is referred to in § 44-203.

Prosecutions under this section are to

be conducted by the Corporation Counsel of the District of Columbia. *United States v. Capital Traction Co.*, 38 App. D.C. 469 (1912).

Cited in *District of Columbia v. Jones*, App. D.C., 287 A.2d 816 (1972).

§ 44-208. Reciprocal transfer and trackage agreements.

Every street railway in the District of Columbia whose lines connect, or whose lines may, after August 2, 1894, connect, with the lines of any other street-railway company, is hereby required to make reciprocal transfer arrangements with such street-railway companies, and to furnish such facilities therefor as the public convenience may require, and to enter into reciprocal trackage arrangements with such connecting roads. The schedules and compensation shall be mutually agreed upon between the said railway companies, and in case of failure to reach such mutual agreement, the matter in dispute shall be determined by the Superior Court of the District of Columbia, upon petition filed by either party. (Aug. 2, 1894, 28 Stat. 218, ch. 189, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(40); 1973 Ed., § 44-208.)

Cross references. — As to joint use of utility facilities, see § 43-502.

§ 44-209. Type of rails required.

No other rail than a flat grooved rail made level with the surface of the streets upon each side of the tracks or roadbeds, so that no obstruction shall be presented to vehicles passing over said tracks, shall be laid by any street railway company in the streets of Washington; provided, that the foregoing requirements as to rails and roadbed shall not apply to street railroads outside the City of Washington. (Mar. 2, 1889, 25 Stat. 797, ch. 370; Feb. 11, 1895, 28 Stat. 650, ch. 79; 1973 Ed., § 44-209.)

Cross references. — As to jurisdiction and control over public ways, see § 7-102.

§ 44-210. Use of another's underground line prohibited.

It shall be unlawful for any street-railway company operating its system or parts of its system over any portion of the underground electric lines owned and operated by another street-railway company in the City of Washington to continue such operation, or to enter into reciprocal trackage relations with any other company, unless its motive power for the propulsion of its cars shall be the same as that of the company whose tracks are used or to be used. For every violation of §§ 44-210 to 44-212 the company violating it shall be subject to a fine of \$10 for every car operated in violation of the provisions of §§ 44-210 to 44-212, said fine to be collected and applied in the same manner as is provided by § 44-211. (Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 711; 1973 Ed., § 44-210.)

§ 44-211. Removal of disused tracks; penalty for noncompliance.

Whenever the track or tracks, or any part thereof, of any street-railway company in the District of Columbia shall not have been regularly operated for railway purposes upon a schedule as required by its charter for a period of 3 months, the Mayor of said District, in his discretion, may thereupon notify such company to remove said unused tracks and to place the street in good condition; and if such company shall neglect or refuse to remove said tracks and place the street in good condition within 60 days after such notice, the said company shall be deemed guilty of a misdemeanor and shall be liable to a fine of \$10 for each and every day during which said tracks are permitted to remain upon the street or streets, or said roadway shall remain out of repair, which fine shall be recovered in the Superior Court of the District of Columbia, in the name of said District, as other fines and penalties are recovered in said Court. (Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 710; June 30, 1902, 32 Stat. 534, ch. 1329; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 44-211.)

Cross references. — As to jurisdiction and control over public ways, see § 7-102.

As to fine for violation of this section, see § 44-210.

Section references. — This section is referred to in § 44-210.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Abandoned structures are illegally in streets, when they are ordered removed by competent authority. *Capital Transit Co. v. Hazen*, 93 F.2d 250 (D.C. Cir. 1937).

§ 44-212. Free transfer under reciprocal trackage agreement.

All street-railway companies within the District of Columbia on January 1, 1902, operating their systems, or parts of their systems, in the City of Washington by use of the tracks of one or more of such companies, under a reciprocal trackage agreement, which shall be compelled to discontinue the use of the tracks of another company, shall issue free transfers to their patrons from one system to the other at such junctions of their respective lines as may be provided for by the Mayor of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 712; 1973 Ed., § 44-212.)

Cross references. — As to power of Public Service Commission over rates, see § 43-601.

As to fine for violation of this section, see § 44-210.

Section references. — This section is referred to in § 44-210.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 44-213. Free transportation of uniformed policemen and firemen.

Repealed. May 10, 1989, D.C. Law 7-231, § 46, 36 DCR 492.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988

and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

§ 44-214. Reduced fares for school children.

Editor's notes. — The Act of February 25, 1931, 46 Stat. 1419, ch. 302, formerly codified as this section, became inoperative upon acceptance of the agreement between the Capital

Traction Company and the Washington Railway and Electric Company for unification under the Act of January 14, 1933, 47 Stat. 759, ch. 10.

§ 44-215. Student fares — Fixed rate for schoolchildren not over 18 years of age; formula for adjusting and payment of fare subsidy.

Repealed. Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534.

Legislative history of Law 2-152. — See note to § 44-216.

§ 44-216. Same — Subsidy agreement.

The Mayor of the District of Columbia is authorized to enter into an agreement with the Washington Metropolitan Area Transit Authority for the transportation, at reduced fares, of students going to and from public, parochial, and private schools and to and from related educational activities in the District of Columbia. (1973 Ed., § 44-214.1; Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534.)

Section references. — This section is referred to in §§ 31-471, 44-221, 31-2821, and 31-2853.18.

Legislative history of Law 2-152. — Law 2-152 was introduced in Council and assigned

Bill No. 2-293, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on July 11, 1978 and July 25, 1978, respectively. Signed by the Mayor on

August 21, 1978, it was assigned Act No. 2-270 and transmitted to both Houses of Congress for its review.

Delegation of authority pursuant to D.C.

Law 2-152, the School Transit Subsidy Act of 1978. — See Mayor's Order 90-130, October 2, 1990.

§ 44-217. Same — Validity of reduced fares; requirements for eligibility.

(a)(1) The fare to be paid by students on regular school days for regular route transportation during peak and off-peak hours on the Metrobus Transit System within the District of Columbia shall be $\frac{1}{2}$ of the base boarding peak bus fare charged to passengers other than students and senior citizens.

(2) The fare to be paid by students on regular school days for regular route transportation during peak and off-peak hours on the Metrorail Transit System within the District of Columbia shall be $\frac{1}{2}$ of the base boarding peak rail fare charged to passengers other than students and senior citizens for Metrorail travel within the District of Columbia.

(3) In a case where the reduced student fare as determined in paragraph (1) or (2) of this subsection results in an amount which is not a multiple of \$.05, such fare shall be rounded downward to the nearest amount which is a multiple of \$.05.

(4) Transfers for students between buses and between rail and bus shall be made in the same manner as are transfers of other passengers, but without any additional charge for the transfer.

(b)(1) This reduced student fare shall be valid only for transportation of students going to and from public, parochial, and private schools, and to and from related educational activities in the District of Columbia on school days.

(2) Student travel on Metrobus and Metrorail during Saturdays, Sundays, holidays, and vacations shall be charged at the regular rate charged to passengers other than students and senior citizens, except for travel to and from a recognized school-related educational activity in the District of Columbia. The Mayor shall issue rules and regulations to enforce this section.

(c) Reduced fares for students on the Metrobus and Metrorail Transit Systems shall be available only to persons who are:

(1) Under 19 years of age;

(2) Residents of the District of Columbia; and

(3) Currently enrolled in a regular course of instruction at an elementary or secondary public, parochial, or private school located in the District of Columbia.

(d) Reduced fares for students on the Metrorail Transit System shall be available only to persons who possess a valid student Metrorail discount card.

(e) Notwithstanding subsections (a) and (b) of this section, the fare to be paid by students on regular school days for regular route transportation during peak and off-peak hours on the Metrobus Transit System and on the Metrorail Transit System shall be \$.15 from September 26, 1981, until December 31, 1981. (1973 Ed., § 44-214.2; Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534; Sept. 26, 1981, D.C. Law 4-33, § 2(a), (b), 28 DCR 3187; Sept. 26, 1995, D.C. Law 11-52, § 815, 42 DCR 3684.)

Section references. — This section is referred to in §§ 44-218 to 44-221.

Legislative history of Law 2-152. — See note to § 44-216.

Legislative history of Law 4-33. — Law 4-33 was introduced in Council and assigned Bill No. 4-3, which was referred to the Committee on Education and the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 2, 1981, and June 16, 1982, respectively. Signed by the Mayor on July 8, 1981, it was assigned Act No. 4-57 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

§ 44-218. Same — Tokens and tickets; certification of eligibility required.

(a) Student fare tokens and tickets shall be issued by the Mayor of the District of Columbia only to students who present a certification of eligibility to use the Metrobus Transit System issued by an authorized school official.

(b) Certifications of eligibility shall be issued only to those students who meet the eligibility requirements imposed by subsection (c) of § 44-217 and shall contain such additional information as the Mayor may require. The Mayor is authorized to verify information contained in certifications of eligibility. (1973 Ed., § 44-214.3; Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534; Sept. 26, 1981, D.C. Law 4-33, § 2(c), 28 DCR 3187.)

Legislative history of Law 2-152. — See note to § 44-216.

§ 44-219. Same — Metrorail discount cards; factors determining need in use of transit system.

(a) Student Metrorail discount cards shall be issued by the Mayor of the District of Columbia only to those students who:

(1) Present a certification of eligibility to use the Metrorail Transit System issued by an authorized school official; and

(2) Have a need to use the Metrorail Transit System as determined by the Mayor.

(b) Certifications of eligibility shall be issued only to those students who meet the eligibility requirements imposed by subsection (c) of § 44-217 and shall contain such additional information as the Mayor may require. The Mayor is authorized to verify information contained in certifications of eligibility.

(c) In determining need pursuant to subsection (a) (2) of this section, the Mayor shall consider appropriate indices of the student’s need to use the Metrorail Transit System for transportation to and from school and related educational activities in the District of Columbia, including the proximity of the student’s residence to his school, the proximity of the student’s residence and school to Metrorail stations and the student’s participation in city-wide

education programs, work-study programs, inter-school extracurricular activities and other similar education and extracurricular activity programs.

(d) Student Metrorail discount cards shall:

(1) Bear the name of the student, an expiration date and such other information as the Mayor may require;

(2) Be displayed by the student when purchasing Metrorail student farecards;

(3) Be signed by the student immediately upon receipt; and

(4) Be nontransferable.

(e) Metrorail student farecards shall:

(1) Be signed by the student immediately upon purchase; and

(2) Be nontransferable.

(f) No person, other than the person for whose use such farecard is issued, shall use a student Metrorail farecard to ride on a Metrorail train and any such other use is hereby prohibited. (1973 Ed., § 44-214.4; Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534.)

Legislative history of Law 2-152. — See note to § 44-216.

§ 44-220. Same — Subsidy payments authorized; audit; interest credit for advance payment.

(a) The Washington Metropolitan Area Transit Authority shall certify to the Mayor, as soon as practicable, following the end of each calendar month:

(1) The amount that is the difference between the total number of all Metrobus student fare tickets or tokens collected by the Washington Metropolitan Area Transit Authority during such calendar month for the transportation of students on the Metrobus Transit System times the average of the regular single trip Metrobus fare charged within the District of Columbia during the peak and off-peak hours, or such other amount as may hereinafter be agreed to by the Mayor and the Washington Metropolitan Area Transit Authority, pursuant to a student passenger survey or other appropriate method, and the total of all such Metrobus student fare tickets or tokens sold during such calendar month times the reduced student fare as determined in § 44-217.

(2) The amount that is the difference between the total of all fares that would have been paid to the Washington Metropolitan Area Transit Authority during such calendar month by students for transportation on the Metrorail System, if such fares had been paid at the otherwise applicable regular adult Metrorail fare for each trip made by students during that month, and the total of all money collected by the Washington Metropolitan Area Transit Authority during such calendar month in connection with the sale of Metrorail student farecards.

(b) The Mayor, upon receiving any such certification, shall pay the Washington Metropolitan Area Transit Authority, subject to an audit acceptable to the Mayor, the amounts contained therein. The Mayor is authorized to make advance subsidy payments to the Washington Metropolitan Area Transit

Authority: Provided, that the District of Columbia shall receive an appropriate interest credit from the Washington Metropolitan Area Transit Authority for each such advance payment: And provided further, that the exercise of such authority shall not affect the certification and audit requirements. (1973 Ed., § 44-214.5; Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534; Sept. 26, 1981, D.C. Law 4-33, § 2(d), 28 DCR 3187.)

Section references. — This section is referred to in §§ 1-2466.

Legislative history of Law 2-152. — See note to § 44-216.

Legislative history of Law 4-33. — See note to § 44-217.

§ 44-221. Same — Rules and regulations.

The Mayor shall promulgate rules and regulations necessary to carry out §§ 44-216 to 44-221, including rules and regulations relating to the maximum number of Metrobus student fare tokens and Metrorail student farecards that may be purchased by an eligible student at any one time or during a specific period of time, and relating to the use or the prohibition of use of fare tokens, tickets and farecards for the transportation of students going to and from school programs and related activities held in the District of Columbia on weekends and holidays. (1973 Ed., § 44-214.6; Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534; Sept. 26, 1981, D.C. Law 4-33, § 2(e), 28 DCR 3187.)

Legislative history of Law 2-152. — See note to § 44-216.

Legislative history of Law 4-33. — See note to § 44-217.

§ 44-222. Annual reports to Congress.

Every street-railroad corporation in the District of Columbia, and every such corporation which shall be organized after June 10, 1896, shall, on or before the first day of February in each year, make a report to each the Senate and the House of Representatives, which report shall be sworn to and signed by the president and treasurer of such corporation, and shall cover the period of one year ending the 31st day of December previous to the date of making the report. Such report shall state the amount of capital stock, with a list of the stockholders and the amount of stock held by each; the amount of capital stock paid in; the total amount now of funded debt; the amount of floating debt; the average rate per annum of interest on funded debt; amount of dividends declared; cost of roadbed and superstructure, including iron; cost of land, buildings, and fixtures, including land damages; cost of cars, horses, harness, and motors and other machinery; total cost of road and equipment; length of road in miles; length of double track, including sidings; weight of rail, by yard; the number of cars and of horses; the number of motors; the total number of passengers carried in cars; the average time consumed by passenger cars in passing over the road; repairs of roadbed and railway, including iron, and repairs of buildings and fixtures; total cost of maintaining road and real estate; cost of general superintendence; salaries of officers, clerks, agents, and office expenses; wages paid conductors, drivers, engineers, and motor men; water and other taxes; damages to persons and property, including medical atten-

dance; rents, including use of other roads; total expense of operating road, and repairs; receipts from passengers; receipts from all other sources, specifying what, in detail; total receipts from all sources during the year; payments for maintenance and repairs; payments for interest; payments for dividends on stock, amount and rate per centum; total payments during the year; the number of persons injured in life and limb; the cause of the injury, and whether to passengers, employees, or other persons. (June 10, 1896, 29 Stat. 320, ch. 395, § 10; 1973 Ed., § 44-215.)

Cross references. — As to records and reports of utilities, see § 43-518.

Reimbursement included in gross receipts. — Reimbursement of railway company for deficits incurred in extending its bus service

were properly included in gross receipts for tax purposes. *Potomac Elec. Power Co. v. Rudolph*, 29 F.2d 634 (D.C. Cir. 1928), cert. denied, 278 U.S. 656, 49 S. Ct. 185, 73 L. Ed. 565 (1929).

§ 44-223. Unlawful conduct on public passenger vehicles.

(a) For the purposes of this section, the term “rail transit station” means a regular rail stopping place for the pick-up and discharge of passengers in regular route service, contract service, special or community-type service, including the fare-paid areas and roofed areas of the rail transit stations (not bus terminals or bus stops) owned, operated, or controlled by the Washington Metropolitan Area Transit Authority; provided, that the term “rail transit station” shall not include parking lots, roadways and other areas intended for vehicle traffic.

(b) It is unlawful for any person either while aboard a public passenger vehicle with a capacity for seating 12 or more passengers, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, which is transporting passengers in regular route service within the corporate limits of the District of Columbia; or while aboard a rail transit car owned and/or operated by the Washington Metropolitan Area Transit Authority which is transporting passengers within the corporate limits of the District of Columbia; or while within a rail transit station owned and/or operated by the Washington Metropolitan Area Transit Authority which is located within the corporate limits of the District of Columbia to:

- (1) Smoke or carry a lighted or smoldering pipe, cigar, or cigarette;
- (2) Consume food or drink;
- (3) Spit;
- (4) Discard litter;
- (5) Play any radio, cassette, recorder, musical instrument or other such device, unless it is connected to an earphone that limits the sound to the individual user;
- (6) Carry any flammable or combustible liquids, live animals, explosives, acids or any other item inherently dangerous or offensive to others, except for seeing eye dogs properly harnessed and accompanied by a blind passenger and for small animals properly packaged;
- (7) Stand in front of the white line marked on the forward end of the floor of any bus or otherwise conduct himself in such a manner as to obstruct the vision of the operator;

(8) Park, operate, wheel, or chain to any fence, tree, railing, or other structure not specifically designated for such use, tricycles, unicycles, skateboards, or roller skates;

(9) Park, operate, carry, wheel, or chain to any fence, tree, railing, or other structure not specifically designated for such use, mopeds, motorbikes, or any other such vehicle;

(10) Park, operate, carry, wheel, or chain to any fence, tree, railing, or other structure not specifically designated for such use, noncollapsible bicycles, unless an individual has a current permit issued by the Washington Metropolitan Area Transit Authority for the transporting of noncollapsible bicycles by rail transit and the individual is complying with all the terms and conditions of said permit; provided, that an individual shall surrender said permit upon the request or demand of any agent or employee of the Washington Metropolitan Area Transit Authority. Sections 44-225 and 44-226 shall not apply to a violation of the terms and conditions of said permit.

(c) It is unlawful for any person, while aboard a rail transit car which is transporting passengers within the District of Columbia, knowingly to cause the doors of any rail transit car to open by activating a safety device designed to allow emergency evacuation of passengers. It is an affirmative defense to a prosecution under this subsection that the person charged believed, in good faith, that the action was necessary to protect people from injury or death.

(d) It is unlawful for any person at a rail transit station to stop, impede, interfere with, or tamper with an escalator or elevator or any part of an escalator or elevator apparatus or to use an escalator or elevator emergency stop button, unless this action is taken by a person with the knowledge or the reasonable good faith belief that an emergency makes the action necessary to preserve or protect human life or property, or unless such action is taken by a WMATA employee, other government employees, or WMATA contractor acting pursuant to their official duties. (1973 Ed., § 44-216; Sept. 23, 1975, D.C. Law 1-18, § 2, 22 DCR 1994; Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344; Sept. 18, 1981, D.C. Law 4-31, § 2, 28 DCR 3120; June 29, 1984, D.C. Law 5-91, § 3(a), 31 DCR 2539; Oct. 1, 1992, D.C. Law 9-171, § 2(a), 39 DCR 5831.)

Section references. — This section is referred to in §§ 6-911, 6-920, 44-225 and 44-226.

Legislative history of Law 1-18. — Law 1-18 was introduced in Council and assigned Bill No. 1-17, which was referred to the Committee on Public Safety. The Bill was adopted on first and second readings on May 13, 1975 and May 27, 1975, respectively. Signed by the Mayor on June 24, 1975, it was assigned Act No. 1-26 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-40. — Law 2-40 was introduced in Council and assigned Bill No. 2-121, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on July 26, 1977 and September 13, 1977, respectively. Signed by the Mayor on October 25, 1977, it was assigned Act No.

2-92 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-31. — Law 4-31 was introduced in Council and assigned Bill No. 4-216, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on May 19, 1981, and June 2, 1981, respectively. Signed by the Mayor on June 19, 1981, it was assigned Act No. 4-53 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-91. — See note to § 44-223.1.

Legislative history of Law 9-171. — Law 9-171, the “Public Transit Escalator and Elevator Safety Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-649, which was referred to the Committee on Re-

gional Authorities. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 23, 1992, it was assigned Act No. 9-269 and transmitted to both Houses of Congress for its review. D.C. Law 9-171 became effective on October 1, 1992.

No distinction made between cigarette types. — For purposes of this section it does not make any difference whether a violator smokes a tobacco cigarette or a marijuana cigarette. In re L.M., App. D.C., 432 A.2d 692 (1981).

Codification of criminal jurisdiction rule. — The territorial demarcation contained in this section merely codifies the rule that the

District of Columbia has criminal jurisdiction only over conduct occurring within its boundaries. In re L.M., App. D.C., 432 A.2d 692 (1981).

Defense based on termination of route outside District is inadequate. — Where the evidence clearly established that the defendant boarded a bus in the District and that a violation occurred in the District, defendant cannot claim that because the bus route terminated in Maryland, her conduct did not take place while the bus was “transporting passengers in regular route service within the corporate limits of the District of Columbia.” In re L.M., App. D.C., 432 A.2d 692 (1981).

§ 44-223.1. Public transit vehicle safety; findings.

The Council of the District of Columbia finds that:

(1) The board of directors of the Washington Metropolitan Area Transit Authority (“WMATA”) has adopted a policy to permit self-evacuation by passengers from WMATA’s rail transit cars under emergency circumstances.

(2) To permit emergency passenger-initiated evacuation from rail transit cars, WMATA will install devices to permit passengers to open rail car doors.

(3) Misuse of these safety devices would create unsafe conditions for rail car passengers, and, therefore should be used only in emergency circumstances by a passenger who believes, in good faith, that activation of the device is necessary to prevent death or injury.

(4) In order to deter persons from activating the door-opening mechanism without good cause or with malice, it is necessary to establish legal prohibitions against misuse of the device and penalties for violations. (June 29, 1984, D.C. Law 5-91, § 2, 31 DCR 2539.)

Cross references. — As to penalties for unlawful conduct on public passenger vehicles, see § 44-226.

Section references. — This section is referred to in §§ 6-911 and 44-226.

Legislative history of Law 5-91. — Law 5-91, “District of Columbia Public Transit Vehicle Safety Amendment Act of 1984,” was intro-

duced in Council and assigned Bill No. 5-295, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 10, 1984, and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-132 and transmitted to both Houses of Congress for its review.

§ 44-224. Failure to pay established fare or to present valid transfer; entry by rear exit door prohibited.

No person shall either knowingly board a public or private passenger vehicle for hire, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, which is transporting passengers within the corporate limits of the District of Columbia; or knowingly board a rail transit car owned and/or operated by the Washington Metropolitan Area Transit Authority which is transporting passengers within the corporate limits of the District of Columbia; or knowingly enter or leave the paid area of a real transit

station owned and/or operated by the Washington Metropolitan Area Transit Authority which is located within the corporate limits of the District of Columbia without paying the established fare or presenting a valid transfer for transportation on such public passenger vehicle or rail transit car. No person shall board a public or private passenger vehicle for hire, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, through the rear exit door, unless so directed by an employee or agent of the carrier. (1973 Ed., § 44-216.1; Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344.)

Section references. — This section is referred to in §§ 6-911, 44-225 and 44-226.

Legislative history of Law 2-40. — See note to § 44-223.

Cause for arrest. — Although the defendant's failure to pay the fare may have been inadvertent, police officers nonetheless had

probable cause to arrest the defendant for failing to pay the fare. *Tillman v. Washington Metro. Area Transp. Auth.*, App. D.C., 695 A.2d 94 (1997).

Cited in *Dant v. District of Columbia*, 829 F.2d 69 (D.C. Cir. 1987).

§ 44-225. Carrier authorized to refuse transportation to violators.

A carrier may refuse to transport a person or persons whose immediately observed conduct or behavior would constitute a violation of § 44-223 or 44-224. (1973 Ed., § 44-217; Sept. 23, 1975, D.C. Law 1-18, § 3, 22 DCR 1995; Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344.)

Section references. — This section is referred to in §§ 6-911, 44-223 and 44-226.

Legislative history of Law 1-18. — See note to § 44-223.

Legislative history of Law 2-40. — See note to § 44-223.

§ 44-226. Penalties.

Violation of § 44-223(b) shall be punishable by a fine of not less than \$10 nor more than \$50 for a first offense and by a fine of not less than \$50 nor more than \$100 or by imprisonment for not more than 10 days or both for each second or subsequent offense. A violation of § 44-223(c) or (d) shall be punishable by a fine of not more than \$300, imprisonment of not more than 90 days, not fewer than 30 hours of community service, or a combination of any 2 penalties, except that imprisonment and community service shall not be imposed together. A violation of § 44-224 shall be punishable by a fine of not more than \$300, by imprisonment for not more than 10 days, or both. All prosecutions under §§ 44-223 to 44-226 shall be brought by the Corporation Counsel. (1973 Ed., § 44-218; Sept. 23, 1975, D.C. Law 1-18, § 4, 22 DCR 1995; Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344; June 29, 1984, D.C. Law 5-91, § 3(b), 31 DCR 2539; Oct. 1, 1992, D.C. Law 9-171, § 2(b), 39 DCR 5831.)

Cross references. — As to conduct of criminal prosecutions generally, see § 23-101.

As to prosecution by indictment or information, see § 23-301.

Section references. — This section is referred to in §§ 6-911 and 44-223.

Legislative history of Law 1-18. — See note to § 44-223.

Legislative history of Law 2-40. — See note to § 44-223.

Legislative history of Law 5-91. — See note to § 44-223.1.

Legislative history of Law 9-171. — See note to § 44-223.

Cited in In re L.M., App. D.C., 432 A.2d 692 (1981).

CHAPTER 3. PASSENGER MOTOR VEHICLES FOR HIRE.

Sec.

44-301 to 44-308. [Repealed].

§§ 44-301 to 44-308. Passenger motor vehicles for hire to carry insurance; exceptions; liability of insurance company absolute; issuance of insurance policies by authorized company; bonds to be secured; reserves for losses, unearned premiums and other liabilities required; rules and regulations; conditions for cancellation of bonds and insurance policies; operation of vehicle without approved bond or policy prohibited; commission authorized to make rules and regulations; alternate provisions for insurance coverage; blanket policy for more than one vehicle; sinking fund in lieu of insurance; conditions for creation and maintenance of sinking fund; proof of financial responsibility; admission of liability by owner for tortious acts of drivers of vehicles; sinking fund exempt from attachment or levy for other obligations of depositor; "owner" defined; penalties for violation of chapter; delegation of authority of Council to Superintendent.

Repealed. Mar. 25, 1986, D.C. Law 6-97, § 22(a), 33 DCR 703.

Legislative history of Law 6-97. — Law 6-97 was introduced in Council and assigned Bill No. 6-159, which was referred to the Committee on Public Services and Cable Television. The Bill was adopted on first and second read-

ings on December 17, 1985, and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-125 and transmitted to both Houses of Congress for its review.

CHAPTER 4. EMPLOYERS' LIABILITY.

Sec.	Sec.
44-401. Liability of common carriers for injuries to employees.	44-403. Insurance contracts no bar to recovery.
44-402. Contributory negligence no bar to recovery.	44-404. Commencement of action.
	44-405. Certain prior laws not affected.

§ 44-401. Liability of common carriers for injuries to employees.

Every common carrier engaged in trade or commerce in the District of Columbia, or in any territory of the United States, or between the several states, or between any territory and another, or between any territory or territories and any state or states, or the District of Columbia, or with foreign nations, or between the District of Columbia and any state or states or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways, or works. (June 11, 1906, 34 Stat. 232, ch. 3073, § 1; 1973 Ed., § 44-401.)

Cross references. — As to actions for wrongful death, see §§ 16-2701 to 16-2703.

As to time of commencement of action, see § 44-404.

As to limitations on duties of carriers and rights of employees, see § 44-405.

Section references. — This section is referred to in §§ 44-404 and 44-405.

Section superseded. — This section in relation to assumption of risk, as applied to the District of Columbia, is superseded by § 4 of the Act of Apr. 22, 1908. *Washington Term. Co. v. Sampson*, 289 F. 577 (D.C. Cir. 1923).

This section is valid in the District of Columbia. *El Paso & N.E.R.R. v. Gutierrez*, 215 U.S. 87, 30 S. Ct. 21, 54 L. Ed. 106 (1909);

Philadelphia, B. & W.R.R. v. Schubert, 224 U.S. 603, 32 S. Ct. 589, 56 L. Ed. 911 (1912).

And it relates only to commerce. *Southern Ry. v. Taylor*, 16 F.2d 517 (D.C. Cir. 1926), cert. denied, 273 U.S. 767, 47 S. Ct. 571, 71 L. Ed. 882 (1927).

Railroad company operating an elevator is not a "common carrier." *Southern Ry. v. Taylor*, 16 F.2d 517 (D.C. Cir. 1926), cert. denied, 273 U.S. 767, 47 S. Ct. 571, 71 L. Ed. 882 (1927).

Appellant injured while working in appellee's car barn, could not recover under this section as appellee was not a common carrier. *Keffer v. Capital Transit Co.*, 183 F.2d 808 (D.C. Cir. 1950).

§ 44-402. Contributory negligence no bar to recovery.

In all actions brought against any common carriers to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributed negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury. (June 11, 1906, 34 Stat. 232, ch. 3073, § 2; 1973 Ed., § 44-402.)

Cross references. — As to time of commencement of action, see § 44-404.

As to limitations on duties of carriers and rights of employees, see § 44-405.

Section references. — This section is referred to in §§ 44-404 and 44-405.

§ 44-403. Insurance contracts no bar to recovery.

No contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee; provided, however, that upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his personal representative. (June 11, 1906, 34 Stat. 232, ch. 3073, § 3; 1973 Ed., § 44-403.)

Cross references. — As to time of commencement of action, see § 44-404.

As to limitations on duties of carriers and rights of employees, see § 44-405.

Section references. — This section is referred to in §§ 44-404 and 44-405.

§ 44-404. Commencement of action.

No action shall be maintained under §§ 44-401 to 44-405, inclusive, unless commenced within one year from the time the cause of action accrued. (June 11, 1906, 34 Stat. 232, ch. 3073, § 4; 1973 Ed., § 44-404.)

Cross references. — As to limitations on duties of carriers and rights of employees, see § 44-405.

Section references. — This section is referred to in § 44-405.

Limitation fixed by this section governs an action against a traction company operating in the District. *Mangum v. Capital Traction Co.*, 39 F.2d 286 (D.C. Cir. 1930).

§ 44-405. Certain prior laws not affected.

Nothing in §§ 44-401 to 44-404, inclusive, shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the Safety Appliance Act of March 2, 1893, as amended April 1, 1896, and March 2, 1903. (June 11, 1906, 34 Stat. 233, ch. 3073, § 5; 1973 Ed., § 44-405.)

Cross references. — As to time of commencement of action, see § 44-404.

Section references. — This section is referred to in § 44-404.

References in text. — The Act of March 2,

1893, as amended, referred to in this section, was codified as 45 U.S.C. § 1 et seq., and was repealed in 1994 by P.L. 103-272, § 7(b). For present law, see 49 U.S.C. § 20301 et seq.



